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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 23

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493, PETITIONER,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION

No. 24

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493, PETITIONER,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 7, 1937.

CERTIORARI GRANTED MAY 17, 1937.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. _____

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION, DEBTOR.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

Nos. 5765 and 5800

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION, DEBTOR.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Appellant,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Appellee.

Counsel for Appellant:	*Counsel for Appellee:*
MR. RICHARD H. HOLLEN,	MR. JOSEPH Z. WILLNER,
MR. GEORGE W. OTT,	MR. JOSEPH KARLIN,

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois on Fourteenth and Fifteenth day of January, in the year of our Lord, one thousand nine hundred and Thirty-six, being one of the days of the regular December Term of said Court, begun Monday, the Sixteenth day of December, and of our Independence the 160th year. Placita.

Present:

Honorable John P. Barnes.
William H. McDonnell, U. S. Marshal.
Henry W. Freeman, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

In the Matter of
Forty-one Thirty-six Wilcox Building Corporation, a corporation,
Debtor. } No. 60278.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 13th day of June, 1935.

3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of
The Forty-one Thirty-six Wilcox Building Corporation, a corpn.,
Debtor. } No. 60278.

PETITION.

To the Honorable Judges of the United States District Court, for the Northern District of Illinois, Eastern Division:

The petition of Forty-one Thirty-six Wilcox Building Corporation, a corporation, hereinafter called Debtor, respectfully states that:

1. The debtor is a corporation organized and existing under the laws of the State of Illinois, and is a business or commercial corporation, and not a municipal, railroad, insurance or banking corporation, or a building and loan association, and is a corporation which could become bankrupt under Section 4 of "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" ap-

proved July 1, 1898, and acts amendatory thereto and supplementary thereto;

2. That the debtor has had its principal place of business and its principal assets at 4136 West Wilcox Street in the County of Cook, City of Chicago, and State of Illinois, in the Northern District of Illinois, during the six months preceding the date of the filing of this petition.

3. That the Debtor is a corporation engaged in the business of owning, leasing, operating, controlling and managing one (1) building and the site whereon said building is situated.

4. That the debtor owns in fee the land and apartment hotel building known as the Wilcox Apartments, located at 4136 West Wilcox Street, in Chicago, Illinois, which is a three-story corridor type apartment hotel building, containing thirty-five apartments, together with furniture and fixtures and equipment therein contained, said parcel of real estate being more specifically described as follows:

Lots 34 and 35, in Block 3 in W. M. Derby's Subdivision of the North East Quarter of the North East Quarter of Section 15, Township 39 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

5. That said property was conveyed to the Madison & Kedzie State Bank for the purpose of securing an indebtedness of $95,000.00 by trust deed, which trust deed was recorded in the office of the recorder of deeds as Document No. 10325493;

6. That said indebtedness was evidenced by 190 bonds in the principal amount of $500.00 each, executed as of the 20th day of March, 1929, and to mature in the following manner:

Bonds Nos. 1 to 3 incl. due and payable September 20, 1930;

Bonds Nos. 4 to 7 incl. due and payable March 20, 1931;

Bonds Nos. 8 to 11 incl. due and payable September 20, 1931;

Bonds Nos. 12 to 15 incl. due and payable March 20, 1932;

Bonds Nos. 16 to 19 incl. due and payable September 20, 1932;

Bonds Nos. 20 to 23 inclusive due and payable March 20, 1933;

Bonds Nos. 24 to 28 incl. due and payable September 20, 1933;

Bonds Nos. 29 to 32 incl. due and payable March 20, 1934;

Bonds Nos. 33 to 37 incl. due and payable September 20, 1934;

Bonds Nos. 38 to 41 incl. due and payable March 20, 1935;

Bonds Nos. 42 to 46 incl. due and payable September 20, 1935;

Bonds Nos. 47 to 190 incl. due and payable March 20, 1936.

7. That thereafter said property was conveyed to the Chicago Title & Trust Company to further secure a junior mortgage indebtedness in the sum of $15,000.00, dated as of December 26, 1929 and recorded on July 4, 1930 in the office of the Recorder of Deeds as Document No. 10565961 in Book 27469, Page 380; that said mortgage was given to secure payment of thirty-six (36) notes, notes numbered 1 to 35 inclusive each in the sum of $200.00, and note No. 36 in the sum of $8,000.00, payable to the order of bearer; said notes being payable on or before the 10th day of each month, commencing with February 10, 1930, with interest at the rate of six per cent per annum.

8. That on November 10, 1931, M. M. Hein filed a bill in the Superior Court of Cook County, entitled M. M. Hein *vs.* Forty-One Thirty-Six Wilcox Building Corporation, *et al,* Superior Court No. 546629, wherein it was sought to foreclose the junior mortgage hereinabove described as Document No. 10565961, which bill is still pending and undisposed of.

9. That the Metropolitan Trust Co. was appointed receiver under and by virtue of said Bill, to take possession of all of the assets of the debtor, and that said receiver is still in full possession, control and charge of all of the 6 assets of the debtor;

10. That thereafter a bill was filed in the Circuit Court of Cook County, entitled Madison & Kedzie State Bank *vs.* Max Gurevitz and others, Circuit Court No. B231251, to foreclose the indebtedness of the first mortgage hereinabove described as document No. 10325493, which Bill is still pending and undisposed of.

11. Your Petitioner represents that the capital stock of debtor, issued, and outstanding is 50 shares of common stock of a par value of $100.00.

Petitioner's Financial Condition is as Follows:

A. The petitioner is indebted to divers and sundry claimants including divers and sundry persons holding bonds secured by trust deed hereinabove described as document No. 10325493 in the total amount of $95,000.00, plus interest

thereon at the rate of six per cent per annum, until maturity of said bonds, and seven per cent per annum thereafter.

B. Petitioner is indebted to divers and sundry persons holding the notes hereinabove described and secured by the junior mortgage trust deed known and recorded as document No. 10565961, in the principal sum of $15,000.00, together with interest thereon at the rate of six per cent per annum.

C. All costs incurred in the foreclosure proceedings hereinabove set forth.

12. That petitioner requires relief under Section 77B of the Bankruptcy Act by reason of the fact that if the property was sold under and by virtue of the foreclosure
7 proceeding now pending, it would bring but a small part of its actual value, to the great loss and detriment of the owners and holders of all of the bonds and notes secured by property of your petitioner, and to the great loss and detriment of your petitioner, and that a proceeding for reorganization of debtor under section 77B of the Bankruptcy Act would be for the benefit of all creditors and all other parties interested in the assets of your petitioner, and could be carried out more economically and expeditiously.

13. That petitioner is unable to meet its debts as they mature and that it desires to effect a plan of reorganization pursuant to Section 77B of the Bankruptcy Act.

Wherefore your petitioner prays that an order may be entered approving this petition as properly filed under said section 77B and that it may be granted all other and further relief to which it may be entitled.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

By: FAY FISCHEL,
President.

United States of America,
State of Illinois,
County of Cook. } ss.

I, FAY FISCHEL, being duly sworn, depose and say that I am the president of the Forty-One Thirty-Six Wilcox Building Corporation, and the person who executed the petition for and on behalf of said corporation; that I have read the foregoing Petition and know the contents thereof; that the same is true to my own knowledge, except as to the mat-

ters therein stated on information and belief, and that as to those matters I believe them to be true; also that said petition is filed in good faith.

FAY FISCHEL.

Subscribed and sworn to before me this 8th day of June, A. D. 1935.

JOSEPH KARLIN,
Notary Public.

(Seal)

June 21, 5. 8 And on, to wit, the 21st day of June, 1935, came the Debtor by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit:

9 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

NOTICE.

To: Winston Strawn & Shaw, 38 S. Dearborn Street
A. E. Peterson, 38 S. Dearborn Street
Schulman Schulman & Abrams, 134 N. LaSalle St.
Sims Stransky & Brewer, 231 S. LaSalle Street
Sabath Perlman Goodman & Rien, 10 South LaSalle St.
Munro & Perkin, 134 S. LaSalle St.
Edwin A. Halligan, 111 W. Washington Street,
John A. Blake 105 W. Madison Street
Walter Fackler 33 N. LaSalle St.
Myron D. Alexander, 69 W. Washington St.
Edelson Edelson & Wise, 100 N. LaSalle St.
Chicago Title & Trust Co. as Successor-Trustee, 69 W. Washington Street.

You and Each of You are hereby notified, that on Friday, the 21st day of June, A. D. 1935, at the opening of court in the forenoon, or as soon thereafter as counsel may be heard we shall appear before His Honor Philip L. Sullivan in the room usually occupied by him as a courtroom in the Federal Building in the City of Chicago, or in his absence before such judge who may be sitting in his place and stead, and shall then and there move the court for an order approving the petition of the Forty-One Thirty-Six Wilcox Building Corporation, heretofore filed, as having been properly filed, and shall further move the court for a restraining order in

accordance with the petition heretofore filed, and further ask that the Court appoint the debtor to take possession of the property herein involved, to manage and operate the same, subject to the order of this Court until the consummation of the plan of reorganization of said property, in accordance with petition hereto attached;

At which time and place you may appear if you so see fit.

KARLIN AND COHEN,
833—11 S. LaSalle Street,
Attorneys for Debtor.

10 And on, to wit, the 21st day of June, 1935, came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed June 1935.

11 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

PETITION.

Your petitioner, Forty-One Thirty-Six Wilcox Building Corporation, a corporation, by Fay Fischel, its president, represents that it filed its petition for the reorganization of its property under Section 77B of the Bankruptcy Act; that the property herein involved is being operated and managed by the Metropolitan Trust Company, a corporation, as receiver, under and by virtue of the order of the Superior Court of Cook County, Superior Court No. 546629; that said property is improved with a three-story English basement corridor type hotel, consisting of thirty-five apartments, as more fully shown in petition of the debtor heretofore filed; that the operation of said property could be managed more economically and expeditiously by the debtor; that considerable expense would be saved in fees and other charges, that such savings would inure to the benefit of all the creditors and stockholders of the debtor.

Your petitioner further represents that there are divers suits pending in the Circuit and Superior Court of Cook County, State of Illinois, foreclosing trust deeds on said property; that if the attorneys prosecuting said suits were permitted to continue in the prosecution of same that great

waste would be committed and expenses incurred, that
12 would result to the great loss and detriment to all of the parties claiming an interest in the premises herein involved.

Wherefore this petitioner prays that this Honorable Court may take jurisdiction over debtor's property, and that an order may be entered, directing the Metropolitan Trust Co. to turn said property over to your petitioner, together with any cash and other property of the debtor that it may have on hand, for the purpose of managing and supervising said property until a plan of reorganization can be effected, and that Your Honor may issue an order restraining and enjoining the Chicago Title & Trust Company, as successor, trustee, its attorneys, servants and employees from proceeding further with the foreclosure proceeding in the Circuit Court of Cook County, entitled, Chicago Title & Trust Company *vs.* Max Gurevitz, Circuit Court Case No. B231251, together with all other parties and attorneys involved in said proceeding, and that this court may enjoin and restrain M. M. Hein, his servants, agents and attorneys, from further proceeding in the Superior Court of Cook County in the case entitled M. M. Hein *vs.* Forty-One Thirty-Six Wilcox Building Corporation, Superior Court case No. 546629, together with all attorneys and parties of record, in said proceeding, and for such other and further and different relief as this Court may deem meet and proper.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

By: FAY FISCHEL,
President.

State of Illinois, }
County of Cook. } ss.

FAY FISCHEL, being on oath first duly sworn, deposes and says that she is the president and duly authorized agent of the petitioner in this behalf, that she has read and knows the contents of the foregoing petition subscribed by her and that the same is true.

FAY FISCHEL.

Subscribed and sworn to before me this 19th day of June, 1935.

LESTER COHEN,
Notary Public.

13 And afterwards, to wit, on the 21st day of June, 1935, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered J 21, 193

14 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Friday, June 21, 1935.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion of solicitors for the debtor

It Is Ordered that leave be and the same is hereby given the debtor to file a Petition under Section 77B of the Bankruptcy Act and

It Is Ordered that all parties in interest be and they are hereby required to answer said Petition within seven (7) days from this date and

It Is Further Ordered that the said petition and answer and the petition for a Restraining Order be and they are hereby referred to Special Master, Charles A. McDonald to report his recommendations to this Court.

15 And on, to wit, the 27th day of June, 1935, came the Respondent by its attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit: Filed Jun 1935.

16 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ANSWER OF CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE, UNDER THE TRUST DEED RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 10325493, TO THE PETITION OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION, FILED HEREIN ON JUNE 13, 1935, AND TO THE PETITION OF SAID FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION FILED HEREIN ON JUNE 21, 1935,

Chicago Title and Trust Company, a corporation, as suc-

cessor Trustee under the Trust Deed made by Max Gurevitz, a bachelor, to Madison & Kedzie State Bank, a corporation, dated March 20, 1929 and recorded in the office of the Recorder of Deeds of Cook County, Illinois on April 1, 1929 in Book 26737 of Records, at page 85, as Document No. 10325493, in answer to the petition of Forty-one Thirty-six Wilcox Building Corporation, a corporation, for reorganization under Section 77B of the Bankruptcy Act, as amended, filed herein on June 13, 1935, and to the petition of said Forty-one Thirty-six Wilcox Building Corporation for the entry of an order directing the Metropolitan Trust Company to turn over to said Forty-one Thirty-six Wilcox Building Corporation certain premises commonly known as 4136 Wilcox Street, Chicago, Illinois, together with any cash and other property of said Forty-one Thirty-six Wilcox Building Corporation, and restraining this respondent, its attorneys, servants and employees, from proceeding with the foreclosure of the lien of said Trust Deed recorded as Document No. 10325493, and asking for other relief, says:

(1) On or about October 24, 1931 Madison & Kedzie State Bank, as Trustee under said Trust Deed recorded as Document No. 10325493, filed its Bill of Complaint in the Superior Court of Cook County, Illinois against Max Gurevitz and others for the foreclosure of the lien of said Trust Deed, and thereafter such proceedings were had therein that this respondent, as successor Trustee under the terms and provisions of said Trust Deed, was substituted as complainant therein, and on or about the 28th day of September, 1933 a reference was had to Henry L. Burman, one of the Masters in Chancery of said Superior Court, who took testimony and heard evidence, and made his report on April 25, 1935, no objections having been filed thereto, and said report was approved by said Superior Court on May 24, 1935, and a decree of foreclosure and sale entered therein on May 24, 1935 in conformity with said report.

(2) On or about May 10, 1935 one George Willens, by Myron D. Alexander, his solicitor, alleging that he was the owner and holder of certain bonds secured by said Trust Deed, obtained the entry of an order in said Cause No. 547687 in said Superior Court granting leave to said George Willens to file his appearance and an answer therein within ten days from the date thereof. Said George Willens thereupon filed therein his appearance, but did not within ten days, or at any

time thereafter, file an answer to the bill of complaint, as
18 amended and supplemented, theretofore filed therein.

This respondent is advised by its solicitors representing this respondent in said proceeding in said Superior Court that through inadvertence notice of the entry of said decree entered on May 24, 1935 was not served upon said George Willens; but thereafter a copy of said decree was served upon his said solicitor, who several weeks thereafter presented to said Superior Court a petition asking the vacation of said decree because notice thereof had not been served upon him, and obtained the entry of an order therein vacating said decree and permitting certain objections attached to said petition to be heard by said Henry L. Burman, Master in Chancery of said Court, which objections are in words and figures as follows:

"Now comes George Willens, party litigant herein, and hereby objects to the report of the Master herein for the following reasons:

"1. For that the Master has erroneously found that the complainant is the successor-trustee herein, in that said finding is not supported by the record and is contrary to law.

"2. For that the Master has erroneously found that the bondholders committee referred to in said Master's Report has the full legal and equitable title in and to the bonds and interest coupons deposited with it, in that said finding is not supported by the record and is contrary to law.

"3. For that the Master has erroneously found that the complainant, as successor-trustee herein, has rendered considerable services in the conduct of these proceedings and that it is entitled to recover the reasonable fee for services so rendered and to be rendered by it and that the sum of One Thousand Seventy-Five Dollars ($1,075.00) is the fair, usual and reasonable fee for such services and that said sum is allowed to the complainant as successor-trustee as an additional indebtedness under said trust deed and entitled to priority as therein found, in that said finding is not supported by the record and is contrary to law, and said fee is grossly excessive and moreover, due to the fact that the record does not support the finding, that the complainant, is the valid successor-trustee, no fees should have been allowed to it whatsoever.

19 "4. For that the Master has erroneously found that the complainant, as successor-trustee, is entitled to recover the solicitor's fees for its solicitors, and that said so-

licitors rendered services herein for which the sum of Three Thousand Seven Hundred Fify Five Dollars ($3,755.00) is a fair, reasonable and usual fee therefor, in that the said finding is not supported by the record and is contrary to the law, and moreover, the said fee is excessive and unreasonable, and due to the fact that the complainant has a law department, it had no right to hire independent counsel as its solicitors herein and charge for their services herein.

"5. For that the Master has erroneously found that the complainant was compelled to expend the sums of Fifty Seven Dollars ($57.00), Two Hundred Twenty Two Dollars ($222.00) and Ten Dollars ($10.00), respectively, for foreclosure minutes herein, and that it is entitled to a lien against the premises prior to the lien of the indebtedness secured by bonds and interest coupons herein, in that said finding is not supported by the record and is contrary to law; moreover, the complainant has issued said minutes of foreclosure and seeks to obtain additional compensation therefor in addition to its services as trustee herein, contrary to law.

"6. For that the Master has erroneously found that the complainant is entitled to the sum of One Hundred Dollars ($100.00) for estimated further foreclosure minutes herein, in that said finding is not supported by the evidence and is contrary to law; moreover, the said complainant is not entitled by law to charge therefor, due to the fact that it is the one who issues such minutes.

"7. For that the Master has erroneously found that the trustee, during its holding possession of the property described in the trust deed herein, collected the rents, issues and profits therefrom, which amounted to the sum of Twelve Thousand Six Hundred Thirteen Dollars and 43/100 ($12,613.43), out of which sum the trustee disbursed the sum of Nine Thousand Eight Hundred Ninety Eight Dollars and 72/100 ($9,898.72), in that said finding is not supported by the evidence and is contrary to law.

"8. For that the Master has erroneously found that the trustee credited the sum of Two Thousand Two Hundred Eighty Three Dollars and 69/100 ($2,283.69) against the mortgage indebtedness herein, in that said finding is not supported by the record and is contrary to law.

"9. For that for divers other reasons, the said Report of said Master is erroneous and contrary to law.

"Wherefore, this objector respectfully prays that the said

report be altered, varied, amended or modified in
20 accordance with the foregoing objections.

GEORGE WILLENS
by MYRON D. ALEXANDER
his attorney."

(3) This respondent believes, and therefore charges the fact to be, that said objections are frivolous and without merit, and that the purpose of the proceedings taken by said George Willens in said Cause No. 547687 in said Superior Court was to hinder and delay the prosecution of said foreclosure proceeding, and to strengthen the position (if any) of said Forty-one Thirty-six Wilcox Building Corporation in any petition which it might thereafter file in this Court under Section 77B of the Bankruptcy Act, as amended, and which it was then contemplated would be filed, although neither the Court nor this respondent was advised of such intended action.

(4) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, is a corporation existing under and by virtue of the laws of the State of Illinois, but states the fact to be that said corporation was dissolved in 1931.

(5) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, has had its principal place of business at 4136 Wilcox Street, Chicago, Illinois, or at any other place, during six months preceding the date of the filing of its petition herein, but states the fact to be that said Forty-one Thirty-six Wilcox Building Corporation was dissolved in 1931 and was not then conducting, nor did it at any time thereafter conduct, any business at 4136 Wilcox Street, Chicago, Illinois, or at any other place, and that since 1931 it has had no principal place of business and has not conducted any business, and is not now en-
21 gaged in the business of owning, leasing, operating, controlling and managing the premises situated at 4136 Wilcox Street, Chicago, Illinois.

(6) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, is the owner in fee of the premises described in the petition filed herein on June 13, 1935, but states the fact to be that heretofore H. F. Newstedt Heating Company, a corporation, filed its bill of complaint in the Circuit Court of Cook County, Illinois, in Cause No. B-207163 in said Court, against said Forty-one Thirty-six Wilcox Building Corporation and others

for the foreclosure of a mechanic's lien, and thereafter Morton Manufacturing Company, a corporation, filed therein its answer in the nature of an intervening petition for the foreclosure of a mechanic's lien, and that such proceedings were had therein; that a decree of foreclosure and sale was entered therein, and pursuant thereto said premises sold and a certificate of sale was issued to said H. F. Newstedt Heating Company and said Morton Manufacturing Company, and a duplicate thereof dated August 5, 1931 was recorded in the office of the Recorder of Deeds of Cook County, Illinois on August 10, 1931, in Book 29414 of Records, at page 508, as Document No. 10951481; that said Forty-one Thirty-six Wilcox Building Corporation, a corporation, did not redeem said premises from said sale, nor were said premises redeemed from said sale by any other person or persons; and that the right of all persons to redeem from said sale has expired.

(7) This respondent admits that on or about November 10, 1931 one M. M. Hein filed his bill of complaint against said Forty-one Thirty-six Wilcox Building Corporation and others in the Superior Court of Cook County, Illinois, in
22 Cause No. 546629 in said Court, for the foreclosure of a certain Trust Deed recorded in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 10565961, and thereafter, on or about December 2, 1931, an order was entered therein extending the receivership of the Receiver theretofore appointed therein to said Cause No. 547687 for the benefit of this respondent, but this respondent has no information upon which it can form a belief concerning the other allegations with respect to said Trust Deed recorded as Document No. 10565961 and the note or notes or other indebtedness secured thereby, and therefore neither admits nor denies the same but demands strict proof thereof.

(8) This respondent is advised, and therefore states the fact to be, that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, did not assume or agree to pay the indebtedness secured by said Trust Deed recorded as Document No. 10325493; and further denies that said Forty-one Thirty-six Wilcox Building Corporation was or is obligated to pay said indebtedness.

(9) This respondent says that Henry L. Burman, said Master in Chancery to whom said Cause No. 547687 was referred, has found that there is due to this respondent, as successor Trustee, for its own use and benefit, the following items:

Successor-Trustee's fees	$1,075.00
Solicitors' fees	3,755.00
Stenographer's fees	30.80
Audit of the Accounts of Trust paid April 6th, A. D. 1932	85.00
Interest on said sum of $85.00 at 7% per annum from 4/6/32 to 4/25/35, date of Master's Report	18.16
Minutes of Foreclosure	57.00
Recording Resignation of Trustee and Acceptance of Successor-Trustee	2.15
23 Further Minutes of Foreclosure	222.00
Notice of Publication	24.00
Further Minutes of Foreclosure	10.00
Further Minutes of Foreclosure	100.00
Total	$5,379.11

and that this respondent, as successor Trustee, for its own use and benefit, has a first, prior and paramount lien upon the premises involved therein, and the rents, issues and profits thereof, for said sum of $5379.11 and all other costs and expenses of said proceeding, and further found that there was due to this respondent, for the equal and pro rata benefit of the holders and owners of outstanding bonds and interest coupons secured by said Trust Deed recorded as Document No. 10325493, the following amounts:

Balance due on interest coupons of Series 4 appertaining to bonds 4 to 190, both inclusive, except bonds 38 to 45, both inclusive, and bonds 51, 52, 54, 55, 56 and 78	$ 2,577.42
Interest on said sum of $2,577.42 at the rate of 7% per annum from 3/20/31, date of maturity, to 4/25/35, date of Master's Report.	739.24
Due on bonds 4 to 7, both inclusive	2,000.00
Interest on said sum of $2,000.00 at the rate of 7% per annum from 2/20/31, date of maturity, to 4/25/35, date of Master's Report.	573.61
Due on interest coupons of Series 5 appertaining to bonds 8 to 190, both inclusive	2,745.00
Interest on said sum of $2,745.00 at the rate of 7% per annum from 9/20/31, date of maturity, to 4/25/35, date of Master's Report.	691.20
Due on bonds 8 to 11, both inclusive	2,000.00

Interest on said sum of $2,000.00 at the rate of 7% per annum from 9/20/31, date of maturity, to 4/25/35, date of Master's Report.	503.61
Due on bonds 12 to 190, both inclusive, due by reason of acceleration	89,500.00
Interest on said sum of $89,500.00 at the rate of 6% per annum from 9/20/31, to 11/27/31, date of acceleration (filing of bill to foreclosure)	999.44
Interest on said sum of $89,500.00 at the rate of 7% per annum from 11/27/31, date of acceleration (filing of bill to foreclose) to 4/25/35, date of Master's Report	21,370.55
Total	$123,700.07

(10) This respondent is informed and believes, and therefore states the fact to be, that said premises, together with all improvements thereon, free and clear of all encumbrances, has a present fair cash market value of not to exceed $46,000.

(11) This respondent denies that said petition filed herein by said Forty-one Thirty-six Wilcox Building Corporation, debtor herein, was filed in good faith or properly filed.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor Trustee,
by WINSTON, STRAWN & SHAW
Its Attorneys.

State of Illinois, }
County of Cook. } ss.

GEORGE W. OTT, being first duly sworn, on oath deposes and says that he is associated with the law firm of Winston, Strawn & Shaw, attorneys for the respondent Chicago Title and Trust Company, a corporation, as successor Trustee, and is duly authorized to make this affidavit on its behalf.

Affiant further says that he has read the above and foregoing answer and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters and things therein stated to be made upon information and belief, and as to those matters and things he believes it to be true.

GEORGE W. OTT

Subscribed and sworn to before me this 27 day of June, 1935.

HELEN C. EGAN
Notary Public.

(Seal)

79 And on, to wit, the 26th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Statement of Evidence in words and figures following, to wit: Statement o Evidence Feb. 26, 1

79½ IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

STATEMENT OF EVIDENCE UNDER EQUITY RULE 75.

Be it remembered that the above entitled cause came on for hearing before the court sitting in bankruptcy on the 13th day of February, 1936, upon the issues formed by the petition of Forty-one Thirty-six Wilcox Building Corporation for corporate reorganization filed June 13, 1935, upon the petition of Forty-one Thirty-six Wilcox Building Corporation filed June 21, 1935, upon the answer of the Chicago Title and Trust Company, as successor trustee, to said petitions, upon the report of Charles A. McDonald, special master of this court to whom said cause had been referred, and upon the exceptions of the Chicago Title and Trust Company, as successor trustee, to the report of said Charles A. McDonald, as special master.

And Karlin & Cohen and Joseph Z. Willner appeared
80 for Forty-one Thirty-six Wilcox Building Corporation, and Winston, Strawn & Shaw appeared for the Chicago Title and Trust Company, as successor trustee.

And the testimony of the several witnesses taken before said Charles A. McDonald, special master of this court, and reported by him to the court, and the exhibits produced before said special master, were read and considered by the court, which testimony and which exhibits were as follows, to-wit:

FAY FISCHEL, called as a witness on behalf of Forty-one Thirty-six Wilcox Building Corporation, having been duly sworn, testified, on direct examination, as follows:

Direct Examination by Mr. Karlin.

Q. State your name, please.
A. Mrs. Fay Fischel.
Q. And where do you live, Mrs. Fischel?
A. 5820 North Kenmore Avenue, Chicago, Illinois.

Q. And you are the president of the Forty-one Thirty-six Wilcox Building Corporation?

A. Yes.

Q. Is that an Illinois corporation organized in the State of Illinois?

A. Yes.

Q. At the time this corporation was organized, do you know what the capitalization of it was, how many shares of stock did it have?

A. 500.

Q. And do you know what kind of stock that was? Was it common stock?

A. Yes.

Q. Common stock of a no par value, is that right?

A. Yes, sir.

Q. Now who owns this common stock, right now?

81 A. Right now, I have 498 shares. My father, Mr. Hyman Schulman, has one share, and Mr. Sam Schulman has the other.

Q. And are those all the stockholders of the corporation at the present time?

A. Yes, that is all.

Q. Who are the directors of the corporation, the same people that are the stockholders?

A. Yes. Mr. Schulman takes care of most of the—

Q. Now, were you authorized by the stockholders of this corporation to file a petition under the Bankruptcy Act, Section 77-B, for the reorganization of this property?

A. Yes, sir.

Q. And in accordance with that authorization, did you cause a petition to be filed?

A. Yes, I was advised by my father, Mr. Hyman Schulman—

Q. To file a petition?

A. —to file a petition.

Q. And what was the purpose of the filing of this petition?

A. Well, we thought, in other words, that we could reorganize our corporation.

Q. And was the corporation indebted at the time, and to whom?

A. What do you mean?

Q. Did you have an indebtedness that you wanted to reorganize?

A. Yes.

Q. What was the indebtedness?
A. Well, between 30 and 35 thousand.
Q. No. I am talking about the bond issue.
A. Pardon me.
Q. Was there a bond issue?
A. Yes.
Q. What was the amount of the bond issue?
A. There were bondholders and we figured that we could—we feel we can take care of them and better ourselves and
82 the bondholders.
Q. What was the amount of the bonded indebtedness?
A. Of our indebtedness you mean?
Q. The bonds, yes, what was the amount of the bonds?
A. Between 30 and 35.
Q. The amount of the bond issue, what was the amount, how much of a bond issue, how much of a mortgage?
A. I don't know the exact amount of the mortgage.
Q. Would it refresh your memory, if I told you it was $95,000., is that correct?
A. About that.
Q. About $95,000.?
A. About $95,000.
Q. And when the corporation acquired this property, did they agree to assume that obligation?
A. Yes.
Q. And this corporation has done all of its business in the State of Illinois, has it?
A. Yes.
Q. And it has been in the State of Illinois as a corporation for the last six months prior to the filing of this petition in bankruptcy.
A. Yes.
Q. Now, how much of an investment have the stockholders in this company, how much money does the 500 shares of stock represent as an investment in the company?
A. That, I think, would be between 30 and 35 thousand dollars.
Q. That was put into the company?
A. Put in besides the mortgages.
Q. Besides the mortgage, for the purpose of completing the improvements on the land?
A. Yes, sir.
Q. And buying the land?

A. Yes. I would not say exactly thirty. It may be between 30 and 35.

Q. And what type of a building is this?

A. It is a three and a half story building, with one,
83 two and three room apartments, with carpeted floors.

Q. Are all the floors carpeted?

A. Yes.

Q. How about the apartments?

A. The apartments are carpeted, also.

Q. And where is it located? Is it at 4136 Wilcox Street, Chicago, Illinois?

A. Yes.

Q. That is where the corporation derives its name from, isn't it?

A. Yes.

Q. Now, there is a mechanic's lien claim, the foreclosure of a mechanic's lien claim that has been filed; has that been straightened out, to your knowledge?

A. Not that I know of. I don't know, Mr. Karlin.

Q. You are not familiar with it?

A. No, I am not.

Q. Who would be more familiar with it?

A. Well, my brother, Mr. Sam Schulman would take care of most of this, and he would know about it.

Q. Did he ever tell you whether it was straightened out or not?

A. Well, I don't know. I just leave those things go to him and if I am in doubt, I know that he would take care of it, all right.

Q. The corporation has never been sold or transferred its title to this piece of property, to anyone, has it?

A. No, it has not.

Q. It is still the owner of the title to this piece of property?

A. Yes.

Q. Subject to whatever foreclosure proceedings are pending against it?

A. Yes, sir.

Q. Did you ever know a Mr. Willens?

A. No, I don't.

Q. Did you ever intend to file this petition in the bank-
84 ruptcy court for the purpose of delaying or impeding the foreclosure proceeding in the State court and for no other purpose?

A. I don't understand what you mean, Mr. Karlin?

Q. Well, did you ever in the filing of this petition in the bankruptcy court file it only for the purpose of delaying and impeding the foreclosure case in the State court and for no other purpose?

A. No, sir.

Q. Your purpose was to attempt a reorganization?

A. Yes, sir.

Q. Of the financial structure of this property?

A. Yes, sir.

Mr. Karlin: That is about all, Master, except as to the value of the property, if you want me to bring in an expert.

We have here an account of the operation of this property by the Metropolitan Trust Company as a receiver. I wonder if we can offer that as evidence of the income and the cost of operation and the amount of taxes that are paid?

The Master: If you wish.

Mr. Karlin: All right.

Reading from this account of the Metropolitan Trust Company filed in the Superior Court of Cook County, Illinois, under case of M. M. Hein *vs.* Forty-one Thirty-six Wilcox Building Corporation, General Number 546629, the receiver shows that the general taxes for the property located at 4136 Wilcox Avenue, Chicago, Illinois, have been paid for the years 1929, 1930, 1931 and 1933, and that 75 per cent of the taxes for the year 1932 have been paid; that it has on hand, after paying all of its operating costs and expenses and taxes
85 $889.41, which is up to and including June 24, 1935; that from the period of February 11, 1935, to June 24, 1935, there has been a gross income from the operation of this property in an amount of $3,886.15; that the total expenses for that period are $3,574.74; that included in the disbursements for that period is an item of $250. to the Metropolitan Trust Company as receiver's fees and $200. to John A. Blake as solicitor's fees, $301.99 to Robert M. Sweitzer as County Collector for taxes, and another item of $186.22 to Robert M. Sweitzer as County Collector for taxes.

I don't think we should offer the whole thing. It would just encumber the file.

The Master: All right.

Mr. Karlin: Unless your Honor feels that it is advisable. There are about ten pages here.

The Master: You might offer it as an exhibit.

Mr. Karlin: All right.

The Master: With leave to withdraw it.

Mr. Karlin: Yes. All right, I will offer it as PETITIONER'S EXHIBIT NO. 1.

The Master: It may be admitted and marked Petitioner's Exhibit No. 1.

(Said document was thereupon offered and received in evidence as DEBTOR'S EXHIBIT 1. Not included in this statement.)

Richard H. Hollen and George W. Ott, of the law firm of Winston, Strawn & Shaw, here appeared, and it was agreed that an opportunity should be afforded them to cross-examine Mrs. Fischel, and to strike out all incompetent testimony.

Mr. Karlin: May the record show that the corporation's capitalization is 50 shares of stock, $100.00 par value,
86 in lieu of the original statement, which said that the capitalization was 500 shares of capital stock. That is all.

The Master: Very well.

(RESPONDENT'S EXHIBIT 1 was offered and received in evidence subject to the objections that it was immaterial to the issues involved.)

(RESPONDENT'S EXHIBIT 2 was then offered and received in evidence, subject to the objection that it was immaterial to the issues involved.)

(RESPONDENT'S EXHIBIT 3 was then offered and received in evidence subject to the objection that it was immaterial and not relevant to the issues in the case, on the ground that the decree itself does not deprive the corporation of the title to the property, but is merely evidence of another indebtedness which the corporation may have and has no bearing on the question of whether the corporation any longer has title to the property.)

(RESPONDENT'S EXHIBIT 4 was then offered and received in evidence subject to the objection that it was immaterial and not relevant to the issues in the case, on the ground that the decree itself does not deprive the corporation of the title to the property, but is merely evidence of another indebtedness which the corporation may have and has no bearing on the question of whether the corporation any longer has title to the property.)

(RESPONDENT'S EXHIBIT 5 was then offered and received in evidence subject to objection.)

87 FAY FISCHEL, on cross-examination testified as follows:

Cross-Examination by Mr. Ott.

Q. Will you state your name, please, Mrs. Fischel?
A. Mrs. Fay Fischel.
Q. Are you the same Mrs. Fischel that testified in this proceeding earlier?
A. Yes.
Q. You stated that you were president of the 4136 Wilcox Building Corporation?
A. Yes.
Q. When did you become president of that corporation?
A. In the early part of May, 1935.
Q. Had you any connection with the 4136 Wilcox Building Corporation prior to that time?
A. Well, I am not sure about whether I was elected—whether there was a meeting in 1932 on that. I am not sure about that, not quite sure. I am pretty sure of May 10th, about that time, in 1935.
Q. Do you own any shares of the 4136 Wilcox Building Corporation?
A. Do I what?
Q. Own any of the shares?
A. Yes.
Q. When did you become the owner of any of the shares in that corporation?
A. In that same year, May, 1935.
Q. In May of 1935?
A. Yes, sir.
88 Q. Were you at any time a director of the 4136 Wilcox Building Corporation?
A. I have been elected president, is that what you mean?
Q. No. Have you been made a director of the corporation?
A. Well I don't know how to—you mean, before that time?
Q. Or since? Before or since?
A. I don't know, as a director. I know that I am considered president—
Mr. Karlin: Well she testified, didn't she, that she is a director now?
Mr. Ott: Well, I know, but I am cross-examining her.

The Witness: I know that I am elected president of this corporation, and if that means—

Q. By whom were you elected president?

A. Well, between—

Q. By whom, I say?

A. By whom?

Q. Yes.

A. When we had—between my brother and dad and I, I was given the—I was elected president by brother and dad.

Q. Was there a meeting called?

A. Yes, in that month of May, 1935.

Q. Was that a stockholders' meeting?

A. If I recall, there was just a sort of a get-together at home, and brother suggested that we join the corporation, and I was elected, I was given the presidency, and brother was vice-president, and dad has the other end of it.

Q. What do you mean by "the other end of it?"

89 A. Well, there is 50 shares in it, and I control 48, and brother has 1, and dad has the other.

Mr. Hollen: Q. Were there any minutes kept of that meeting?

(No response.)

Mr. Ott: Q. Did you pay anything for the shares?

A. Well, the exact amount of it I can't say, because—

Q. I say, did you pay anything for the shares?

A. Well, I will tell you how I—as a loan to my dad, he gave me the control of this stock.

Q. When did you make that loan to your dad?

A. Well, from time to time, I don't know exactly.

Q. And when did he give you the shares of stock as a loan?

A. At this—in 1935.

Q. Was that the first meeting that you had attended, having to do with the affairs of 4136 Wilcox Building Corporation?

A. Yes, that is the first one I attended to, yes.

Q. And what is your father's name?

A. Mr. Hyman Schulman.

Q. And who is your brother?

A. Sam Schulman.

Q. Do you know who the board of directors are?

A. The board of directors of the building?

Q. Yes.

A. Well, you mean in taking care of the—

Q. Managing the affairs of the corporation?

A. Well, my brother does most of the managing of the building.

Q. Do you know whether there is a board of directors?

A. I don't know.

90 Q. Do you know whether any proceedings were brought by the Attorney General of the State of Illinois to dissolve the 4136 Wilcox Building Corporation?

Mr. Karlin: I will object to that.

The Master: If she knows, she may answer.

A. Well, I don't know anything about that. I will tell you why—

The Master: If you don't know, it doesn't matter as to why.

The Witness: I just don't know.

Mr. Ott: Q. Do you know whether or not the property—what was the location of this property?

A. The address?

Q. Yes.

A. 4136 Wilcox.

Q. The property at 4136 Wilcox Avenue, Chicago, Illinois, has been sold pursuant to any decree of Court?

Mr. Karlin: Object.

The Master: She may answer if she knows.

A. I don't know whether it has been sold or not. I know one thing, it has been foreclosed.

Mr. Ott: Q. You don't know whether it has been sold under any decree?

A. No, I don't.

Q. And you don't know whether any redemption has been made from any sale pursuant to any decree?

A. No, I don't.

Q. I show you a certain petition which was filed in this proceeding on June 13, 1935, and ask you whether your signature appears on the last page thereof?

A. Yes, that is my signature.

91 Q. Did you read this petition before you signed it?

A. Well, I will tell you, in a case like that, my brother would bring things home to me and say, "Fay, we have done this or done that, and want your signature to it," and I let him run things, and if he says it is all right, it is all right with me.

Q. Well, did you read this over before you signed it?

A. I don't know if I did or not.

Q. Did you appear before Mr. Joseph J. Karlin and subscribe and swear to that before him?

A. Yes, sir. I wouldn't sign it, I guess, if I hadn't read it.

Q. But you appeared before him and subscribed to it?

A. Yes, sir.

Q. Now, the third paragraph of the petition states that the debtor "is a corporation engaged in the business of owning, leasing, operating, controlling and managing one building, and the site whereon the building is situated."

What business has the 4136 Wilcox Building Corporation conducted since May 10, 1935, which you state was your first connection with the corporation?

A. Well, I couldn't explain that all to you, I just couldn't.

Q. Does it lease this property?

A. Did you say, does it?

Q. Does it lease this property?

A. Does the building lease—

Mr. Karlin: I am going to object to this, if your Honor please.

92 A. I can't go into detail on every little thing. It is awfully hard for me to—

Mr. Karlin: I am objecting, just a minute, please. I object, on the ground that it isn't cross examination.

The Master: She may answer.

Mr. Karlin: I further object to it on the ground that it isn't material, as to what the company did in May, 1935.

The Master: She may answer.

Mr. Karlin: All right, go ahead.

Mr. Ott: Q. Do you know whether or not there is a receiver in possession of the property at 4136 Wilcox Avenue?

A. Well, I just know that the building is foreclosed, and has been foreclosed, and there is a receiver in now.

Q. You know that there is?

A. Yes.

Q. And is the receiver leasing the property? Do you know who is operating it?

A. Yes.

Q. Who is the receiver, do you know?

A. I don't know.

Q. Is the corporation making any leases, do you know, or has it made any leases to your knowledge since May of 1935?

A. Since May, 1935?

Q. Yes.
A. I don't know.
Q. Do you know whether it made any leases prior to that time?
A. Not within the last few years, while the building was foreclosed.
93 Q. Well, what business has the corporation been conducting in the last year, if you know?
A. What business has it?
Q. Yes.
A. Well, I don't know what you mean by that, what business—
Q. Well, is it operating an apartment building, is it selling dry goods, or what kind of business is it doing?
A. Not the corporation, right now?
Q. Yes.
A. Well, we haven't anything to do with the building right now.
Q. And do you have anything else, does the corporation do anything else?
Mr. Karlin: She has answered that. I object to that.
The Master: If she knows, she may answer.
A. I know that the building has been foreclosed, and we haven't been—
Mr. Ott: Q. Well, it isn't transacting a coal business or a dry goods business or any other kind of business that you know of, is it?
A. No.
Q. And do you know whether it did conduct any such business within six months prior to June 13, 1935?
Mr. Karlin: I object to that question on the ground that it says "conduct that business," not referring to any specific kind of business, except coal business and dry goods.
Mr. Ott: All right, I will withdraw the question.
Q. Do you know whether or not the 4136 Wilcox Building Corporation, prior to June 13, 1935, leased, operated or managed the building situated at 4136 West Wilcox Street, Chicago, Illinois?
94 A. Prior to May, 1935?
Q. Yes.
Mr. Karlin: I object to that question—
The Master: She may answer.
Mr. Karlin: Well, I would like to state the ground—on the ground that she has already answered that it hadn't.

The Master: Well, if she has answered it, there will be no harm in answering it again.

The Witness: A. Well, in that case, I have told you it has been foreclosed, and we haven't had anything to do with it within those few years.

Mr. Ott: All right.

The Master: Q. You mean by "we had nothing to do with it," you mean the corporation had nothing to do with it?

A. We weren't managing it—

Q. Not "we". The question is, did the corporation manage it?

A. The corporation—

Q. When?

A. During the time it was foreclosed, the corporation had nothing to do with the building.

Mr. Ott: Q. Do you know whether or not the corporation was organized under the laws of this State?

A. I think it was.

Q. Do you know whether it has been or not?

A. Well, I am sure—

Q. I say, do you know whether it has been or not?

A. Well, I am pretty sure. I won't say for sure, because I don't know much about the details, I will tell you, because—

Mr. Karlin: Q. Your belief is that it has been?

95 A. I believe it has, yes. I just can't express myself.

Mr. Ott: Q. Have you ever seen a charter of the corporation or articles of incorporation, or anything of that sort?

A. Yes.

Q. You stated on direct examination that you were authorized by the stockholders of the corporation to file a petition under section 77-B; is that right?

A. Yes, sir.

Q. And who authorized you to file that petition?

A. Who did?

Q. Yes, who were the stockholders that authorized this?

A. Who were the stockholders?

Q. Yes.

A. Of the corporation, you mean?

Q. Yes.

A. Well, dad and brother.

Q. Do you know whether the directors of the corporation authorized you to file the petition?

A. I don't know; I don't remember.

Q. Now, you stated on direct examination that the corporation had been in the State of Illinois as a corporation for the last six months prior to the filing of the petition. Do you recall that?

A. Pardon me, what was that question?

Mr. Ott: Will you read that question?

(Question read by Reporter).

A. Yes, sir.

Q. Would your answer have been the same if you had known that the corporation had been dissolved in 1931?

96 Mr. Karlin: Just a minute. I object to that on the ground that what the legal effect of the dissolution is in this case, she couldn't be asked to testify to. It isn't competent evidence.

The Master: Sustained.

Mr. Ott: Q. Well, how do you know that the corporation has been in existence under the laws of the State of Illinois during the last six months?

Mr. Karlin: I am going to object to that, if your Honor please.

The Master: She may state the basis of her answer.

A. How do I know?

Mr. Ott: Q. Yes.

A. Well, I know through dealing with my attorney, who takes care of all those matters. He has informed me, and we have been together on it, we have signed papers upon it, we know that the corporation has been since May 10th—I am pretty sure it was May 10th, 1935.

Q. The basis of your information is what your attorney has told you, is that right?

A. No, we have been there at his office, brother, dad and I, and read things over, and talked things over.

Q. That is the basis of your knowledge in answering that question, is that right?

A. Yes.

Q. Now, you stated on direct examination that the corporation was still the owner of the property at 4131 Wilcox Avenue—

Mr. Karlin: '36.

Mr. Ott: (Continuing) —4136 Wilcox Avenue, Chi-

97 cago, Illinois; is that right?

A. Yes, sir.

Q. Now, what is the basis of your knowledge that it is still the owner of that property?

A. Well, we haven't been told that we aren't—we aren't put out of it altogether.

Q. Is that the only basis of your knowledge, that you haven't been told that you have been put out?

A. Well, I don't know how to express that, to explain that to you.

Q. Well, will you try?

A. Could Mr. Karlin explain that to me what you mean by that? I don't know what he means by that.

Mr. Karlin: I guess not. I don't know, either, what the basis of her knowledge is as long as the corporation hasn't sold the property or conveyed or transferred it, I guess that would be a sufficient basis.

Mr. Ott: Q. Well, how do you know it?

A. I don't know of anything else. I just know that we were incorporation and—

Q. Did you examine the tract indices at the Court House here in Chicago?

Mr. Karlin: Just a minute, I object to that.

The Master: I don't suppose she knows what that means.

The Witness: I can't take care of all that legal end of it. I would have to devote all my time to it, and I just couldn't.

98 *Redirect Examination by Mr. Karlin.*

Q. You know that the corporation did have title to this property at one time, didn't it?

A. Yes, I do.

Q. Did it ever transfer, assign or convey this property out of its possession?

A. No, it didn't, not that I know of.

Motion by Mr. Ott: I move to strike the testimony of this witness on direct examination with respect to her statement that the corporation has had any existence within the last six months prior to the filing of the petition in this case, on the ground that this witness obviously doesn't know.

The Master: It may stand for what it is worth.

Motion by Mr. Ott: I move to strike also the testimony that the Forty-one Thirty-six Wilcox Building Corporation is still the owner of the property located at 4136 Wilcox Avenue, Chicago, Illinois, on the ground that the witness

does not know; and moreover, that the statement is a conclusion of this witness.

The Master: It may stand.

99 JOSEPH J. KARLIN, called as a witness on behalf of the debtor, having been first duly sworn, testified in narrative form as follows:

That there was a meeting held by the board of directors of the Forty-one Thirty-six Wilcox Building Corporation. That, to my best recollection at this time, it was held on the 10th day of May, 1935, in my office. That there was present Mrs. Fischel, here, Mr. Schulman and Hyman Schulman. That they had discussed with me at that time the question of filing a petition under Section 77 B of the Bankruptcy Act, and that at that time there was a meeting of the board of directors called instantly, and a resolution passed by the board of directors, consisting of Mrs. Fay Fischel, Samuel E. Schulman and Hyman Schulman, and they authorized the filing of this petition in bankruptcy on that date.

Mr. Ott: I have no objection to the testimony, except that it is our contention that there couldn't have been a duly constituted meeting of the board of directors, for the reason that the corporation was dissolved by the decree heretofore introduced into evidence as Chicago Title and Trust Company's Exhibit 1.

JOSEPH J. KARLIN, on cross examination, testified as follows:

There was one meeting of the stockholders to elect the directors on that same date, and then the same people
100 that were stockholders were elected directors. I don't know of any prior meetings held by this corporation prior to 1935.

Stipulation.

The following stipulation was entered into:

Edward Halligan filed an appearance for the Forty-one Thirty-six Wilcox Building Corporation in the case of Chicago Title and Trust Company, as successor trustee, *v.* Max Gurevitz *et al.*, being cause number 547687, in the Superior

Court of Cook County, Illinois, which was a proceeding to foreclose the lien of the first mortgage on said premises, and that Mr. Halligan has received accounts from the receiver.

(Whereupon the DEBTOR'S EXHIBITS 1, 2, 3, 4, 5 and 6 were offered and received in evidence, subject to the objection that the affidavits are not properly admissible in evidence, and that the assignments are not the assignments of the certificate itself.)

(DEBTOR'S EXHIBIT 7 was thereupon received in evidence over the objection of Mr. Ott that there was no such corporation as the Forty-one Thirty-six Wilcox Building Corporation in existence to whom such an assignment could be made, but the objection by Mr. Ott that there was no proof of the execution of the assignment was sustained.)

101 MITCHELL EDELSON, called as a witness on behalf of the debtor, having been first duly sworn, testified as follows:

Debtor's Exhibit 7 bears the signature of Myron D. Alexander. I am familiar with his signature.

MITCHELL EDELSON, on cross examination testified as follows:

I saw Myron D. Alexander sign Debtor's Exhibit 7. It was signed in my office. Myron D. Alexander is not an associate of mine. He is a friend of mine who came to my office with this situation and informed me that a relative of his owned a special block of bonds in this building and he asked me if I would cooperate with him in this case. That was, I would say, in the month of March or April, 1935. That was prior to the execution of Debtor's Exhibit 7. He said that Willens was a relative of his. Except for another matter prior to that time, I never represented Mr. Willens. Since then Mr. Willens came in on this matter and still another matter. Debtor's Exhibit 7 was executed about the date it bears. I believe it was on the date it bears. I am not positive of that. Consideration for the assignments of the master's certificate of sale, being Debtor's Exhibit 7, was their promise to file a petition under Section 77 B. Mr. Willens

owns $40,000 of bonds secured by the first mortgage trust deed on the premises involved, which is almost half of the issue. I am familiar with the case of Chicago Title and
102 Trust Company, as successor trustee, *v.* Gurevitz. I became familiar with that case about the date of the execution of Debtor's Exhibit 7, just before that date when I first saw Mr. Willens, he asked me to become familiar with it, and advise him in regard to it. I think the answer of the Chicago Title and Trust Company, as successor trustee, to the petition herein sets out the circumstances with reference to the decree, and I believe your dates are correct. I would have to refer to the answer of the Chicago Title and Trust Company to determine whether the assignment was given after the decree was entered. Apparently, the decree was entered on the same date as the date of Debtor's Exhibit 7. Our office prepared the petition that was filed in the case of Chicago Title and Trust Company *v.* Gurevitz on May 10, 1935, alleging that George Willens was the owner and holder of certain bonds secured by the trust deed. Petition was filed in that proceeding, and George Willens was then given leave to file an answer within ten days from the date of the filing of the petition. I don't know whether George Willens filed an answer. The answer of the Chicago Title and Trust Company sets that out.

Stipulation.

It was stipulated that the Metropolitan Trust Company was appointed receiver for the premises in the foreclosure proceeding under the name of Cook County Trust Company, and is now in possession of said premises.

103 MITCHELL EDELSON, called as a witness on behalf of the Chicago Title and Trust Company, as successor trustee, testified as follows:

Our office prepared the petition that was filed in the case of Chicago Title and Trust Company, as successor trustee, *v.* Gurevitz, to vacate the decree that was entered in that proceeding. Debtor's Exhibit 7 must have been executed subject to the decree because the decree was entered on or about the date the assignment bears, and the motion to vacate must have been made subsequent to the date of the entry of the decree. The decree was entered without notice to us, notwith-

standing that the order provided that notices in the proceedings should be served upon us. I believe we filed numerous objections to the master's report. I believe that the objections were filed after leave had been given to vacate the decree. I don't recall. I feel quite certain that they were filed afterwards. I directed the preparation of the objections. The objections were on behalf of George Willens, one of the bondholders. Mr. Willens paid the consideration for the assignments to the H. F. Newstedt Company and the Morton Manufacturing Company thru our office or thru Myron Alexander.

I have known Mr. Alexander for a good many years. I met him with reference to this transaction about the month of March or April, 1935. He told me that he represented Mr. Willens who had $40,000.00 worth of bonds in the case of Chicago Title and Trust Company *v.* Gurevitz, and he discussed in the various features of his client's holding in
104 that and in another issue, the Christensen issue. He informed me that he would like to recommend to Mr. Willens that he retain our office as well as himself to represent him in connection with his holding. He wrote or wired Mr. Willens and a day or two later Mr. Willens came into my office.

Debtor's Exhibits 2 to 7 were delivered to Samuel Schulman, but that was some time after Mr. Willens came to my office. Mr. Willens retained us in these two matters. We examined into the proceedings in both cases, and we found that hearings had been had in the case of Chicago Title and Trust Company *v.* Gurevitz, and we subsequently informed Mr. Willens that it was our opinion that a petition ought to be prepared, making Mr. Willens a party in the proceedings. We, accordingly, filed Mr. Willens' appearance shortly thereafter.

Thru Mr. Horwitz, I, inadvertently, learned that Sam Schulman was related to the owners of the capital stock of the Forty-one Thirty-six Wilcox Building Corporation. I asked him why he did not file a petition in this case under Section 77 B where it might be possible for him to work out a reorganization for his benefit, and he asked me what my interest in the matter was. I told him I represented Mr. Willens who had $40,000.00 in bonds, and I told him it would be more expedient and more economical to work out a reorganization under Section 77 B. He told me he would discuss it with the stockholders of the corporation and ask them to give it

serious consideration. I don't know who the stockholders were at the time. He told me that they were relatives of
105 his and that they held for the benefit of relatives of his who were interested in this building. I haven't any idea when the relatives acquired their interest in the corporation. A few days later Mr. Schulman called to see me and he said to me that it would be a good idea to file a petition under section 77B, but there were some junior liens outstanding and he would not want to file under section 77B unless they were acquired by the corporation. I asked him how much it cost to obtain the master's certificate. He told me he thought it could be obtained for less than $500.00. I wrote to Mr. Willens recommending Mr. Willens to pay out the money for the purpose of enabling us to deliver to the corporation the masters' certificate. Prior to the issuance of the deed, he authorized either our office or Mr. Alexander's to do so, and we requested Mr. Alexander to negotiate for it. Mr. Alexander negotiated for the master's certificate, and shortly after that it was acquired. I think it was about the same day. We finally got it. We paid to one of the companies a sum of money and the other company a sum of money. We learned the master's certificate was lost and we took proper affidavits in connection with the loss of the master's certificate, and took an assignment of the undivided interests in the certificate in favor of Mr. Alexander. The master's certificate was subsequently assigned by Mr. Alexander to the corporation, upon the corporation's promise to file a petition under Section 77B. There was some discussion as to what the corporation should receive in any reorganization. Mr. Schulman asked what we would do for them by way of voting our
106 bonds in the event of the reorganization. We said we would make any fair deal. There was a discussion as to what would constitute a fair deal to the stockholders of the corporation, but it was mostly suggestions made by Mr. Schulman, and I told Mr. Schulman to file his petition first, and we would—as far as we were concerned—vote for any deal that was fair because we told him we believed first of all in a reorganization and then we would have a proper accounting from the successor trustee, which we didn't believe was had in the State Court.

The master in chancery in his report found that the sum of $12,613.43 had been received by the trustee; that the sum of $9,898.72 had been expended. As I understand the master's report, that money was collected by the Madison & Ked-

zie State Bank who was the predecessor trustee, I believe. I am not quite positive on that. I don't believe that the accounting made by the Madison & Kedzie State Bank is a proper accounting. I don't know what the accounting was that was made before the master in chancery. All I know is that a number of figures had been submitted to the master in chancery in the state court, and I feel that there probably would be a whitewash of that predecessor trustee's action. That applies to the fact that counsel for the plaintiff in that case were requesting a fee of $3,755.00. I don't know whether it is the Chicago Bar schedule fee or not. It may be, but I feel that the expense, plus the charge of the proper accounting would be an expense, and would give the bondholders
107 merely the opportunity to participate in the proceeds of a sale which would, in itself, not amount to a proper reorganization of the bondholders' interest.

In my opinion, almost any arrangement that could be had in the Federal Court under Section 77B would be more advantageous than in the state court, in view of the fact that a bid could only afford to the owner of the equity of redemption and junior mortgage holder an opportunity to redeem the property from some ridiculously low bid; any other alternative would give the bondholders' committee who do not represent the substantial bondholders in this case, an opportunity to acquire the title at some ridiculous figure for their benefit and the benefit of the bonds deposited with them, subject to an opportunity to redeem from some ridiculously low bid which would leave my client in a position where he would be helpless, and he might receive five to fifteen cents on the dollar for his bond.

I feel that a reorganization under Section 77B would be much more advantageous no matter what deal was given to the equity owner. I cannot conceive of a deal that would give the owner of the equity of redemption anything that would be less desirable than the completion of the proceedings in the state court.

I directed that the master's report be examined by Mr. Wise of our office. That was done prior to the filing by the corporation of the petition under Section 77B. We filed our appearance in the foreclosure proceedings about fourteen days before the decree was vacated.

108 Mr. Ott: We admit that the failure to serve your office was an oversight, due to the fact that the appearance was entered so late.

The objections set forth in the answer filed in this proceeding by the Chicago Title and Trust Company are the objections which were filed by your office on behalf of George Willens. We objected to the allowance of a fee of $1,075.00 of the Chicago Title and Trust Company. We objected to the allowance of $3,755.00 to the attorneys for the plaintiff. I do not believe the state court has any authority to vacate a sale that is had unless fraud can be proven or cicumstances tanamount to fraud. I believe that the decision in the Rubin case that the prior authorities that we had in years gone by will be in fact upheld by the Supreme Court of this state, and that the judge in the state court has not the authority to set aside a sale unless fraud or circumstances tantamount to fraud can be proven.

I recognize the expense that would accrue to our client in an attempt to upset the sale, and I feel to saddle such an expense on him would be an additional reason for filing the petition under Section 77B in the Federal Court by the corporation.

I believe that any judge in the state court who assumes to set aside a sale merely on the showing of inadequacy of bid or attempt to show cuch inadequacy, is exceeding his discretion. There is no question that Mr. Willens who owns one-half of this issue, would be unable to protect his
109 interests at a sale. I believe that this property would be sold at a ridiculously low figure because there is no agreement among the bondholders that would make a high bid possible. Mr. Clarence Edelson of our office and Mr. Myron Alexander had conversations with Mr. Swanson, who is chairman of the bondholders' protective committee, with respect to a switch of bonds held by Mr. Willens on this building for bonds which the committee held on another building, in order to consolidate their holdings. It was that fact which determined in my mind that it would be impossible for the bondholders to agree because it was apparent that Mr. Swanson was desirous that all of the bonds of this issue be held by his committee and that Mr. Willens participate only in the Christensen building and not in this building. That was a matter of negotiation between Mr. Willens and Mr. Swanson. There is no question in my mind but that this building is more desirable than the Christensen building.

Conversations with regard to the trading of bonds on these two buildings were held both before and after the filing of this petition in these proceedings. Any negotiations subsequent were with unauthorized persons.

MR. MITCHELL EDELSON, on cross-examination by Mr. Karlin, testified as follows:

When I spoke to Mr. Schulman about filing this petition under section 77B, it was merely a suggestion that I made to him. There were no other arrangements that I had with Mr. Schulman in my negotiations with him in which
110 any other consideration was promised to him than I have already stated. The only consideration for the delivery of Debtor's Exhibit 7 was his agreement to cause the corporation to file a petition under section 77B for its reorganization. Mr. Schulman also felt that the filing of the petition under section 77B would be more advantageous for himself.

JOSEPH J. KARLIN, called as a witness on behalf of the Chicago Title and Trust Company, as successor trustee, having been first duly sworn, testified as follows:

My name is Joseph J. Karlin. I am an attorney at law. I don't know Mr. Willens. I know Mr. Edelson here. I didn't know him at the time the petition was filed. The information I got from Mr. Sam Schulman he gave it to my office. We discussed the filing of this petition. Some time prior to the filing of it, we discussed with Mr. Schulman the benefits under section 77B. He came into the office in respect to the filing of a petition under section 77B. I represented Mr. Schulman for about six or seven years. I still represent him and I have been continuously representing Mr. Schulman, and have also represented the other members of his family from time to time. The Forty-one Thirty-six Wilcox Building Corporation obtained title to the property from Max Gurevitz. I didn't organize the corporation. I believe I represented Mr. Schulman or his family at that time. The Schulmans' obtained their interest in the stock ownership of the corporation from its inception. As I remember the situation, the
111 stock was first issued to Mr. Gurevitz who held it merely in trust for the family of Mr. Schulman, and he took title merely for the purpose of conveying it to the corporation at the time. The corporation assumed the indebtedness. I was so informed by Mr. Schulman and Mrs. Fay Fischel.

JOSEPH J. KARLIN, on cross-examination by Mr. Mitchell Edelson, testified as follows:

The corporation was organized April 10, 1929; such interest as has been paid on this indebtedness was paid by the corporation. I know Mr. Gurevitz. I do not know what his business is at the present time. He was employed in the office of Mr. Schulman. I don't know what salary he was drawing. I believe he was employed by Mr. Schulman at the time he executed the notes secured by the trust deed dated March 20, 1929. I could not say definitely.

The exhibits offered and admitted in evidence on behalf of the respective parties were as follows:

O. K.

JACOB J. KARLIN

112 DEBTOR'S EXHIBIT 1.

Filed Nov 14 1935 Charles A. McDonald, Master in Chancery.

Certificate Number 1380 Book 557 Page 599.

STATE OF ILLINOIS.

Office of the Secretary of State.

(Cut)

To all to whom these Presents Shall Come, Greeting:

Whereas, a Statement of Incorporation, duly signed, acknowledged and verified under oath, has been filed in the Office of the Secretary of State, on the 10th day of April, A. D. 1929 for the organization of the Forty-one Thirty-six Wilcox Building Corporation under and in accordance with the provisions of "An Act in relation to corporations for pecuniary profit" approved June 28, 1919, and in force July 1, 1919, and all acts amendatory thereof, a copy of which statement is hereto attached;

Now Therefore, I, William J. Stratton, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said Forty-one Thirty-six Wilcox Building Corporation is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 10th day of April, A. D. 1929 and of the Independence of the United States the one hundred and 53rd.

WILLIAM J. STRATTON
Secretary of State.

(Seal)

113 A 21796 Apr 10 '29

Book 557 Page 600

(This Statement Must Be Filed in Duplicate)

(Stamp) Paid Apr 10 1929 $20.00 RRP 13.35 F.T.

State of Illinois, } ss.
Cook County, }

To William J. Stratton, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois,

Name	Address			
	Number	Street	City	State
Maurice H. Nierenberg,	801	Conway Bldg.,	Chicago,	Ill.
Mary Henry,	801	Conway Bldg.,	Chicago,	Ill.
Max Brooks Gurevitz,	801	Conway Bldg.,	Chicago,	Ill.

propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to wit:

1. The name of such corporation is Forty-one Thirty-six Wilcox Building Corporation.
2. The object for which it is formed is For Acquiring, Owning, Erecting, Leasing and Operating only one building and the site therefor and for no other purpose.
3. The duration of the corporation is Ninety-nine (99) Years.
4. The location of the principal office is 801 Conway Bldg., 111 W. Washington St., City of Chicago, County of Cook, State of Illinois.
5. The total authorized capital stock is { Preferred $ None / Common $5,000.00 } and No shares of { Preferred / Common } without par value.
6. The amount of each share having a par value is $100.00.
7. The number of shares having a par value is 50.
8. The number of shares of no par value is None.

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9. The name and address of the subscribers to the capital stock, and the amount subscribed and paid in by each, are as follows:

Name	Address Number Street City State	Number of Shares	Amount Subscribed	Amount Paid in
Maurice H. Nierenberg	801-Conway Bldg., Chgo, Ill.	1	$ 100.00	$ 100.00
Mary Henry	801-Conway Bldg., Chgo, Ill.	1	100.00	100.00
Max Brooks Gurevitz	801-Conway Bldg., Chgo, Ill.	48	4800.00	4800.00

10.*

Notice.—In case subscription list or preferred stock provisions are too long to get in the above space, insert at this place on separate sheet of legal cap leaving two inches at top for binding.

115 Book 557 Page 602

11. Amount of capital stock which it is proposed to issue at once:

(a) On shares having no par value.....
Preferred $.....
Common $ None

(b) On shares having a par value of $100.00.....
Preferred $ None
Common $5,000.00

12. Amount of capital stock actually paid in:

(a) On shares having no par value.....
Preferred $ None
Common $ None

(b) On shares having a par value of $100.00.....
Preferred $ None
Common $5,000.00

13. Amount of capital stock paid in cash is.....$ None

14. Capital stock paid in property as follows:.....$5,000.00

15. The location and general description of such property is as follows: Lots 34 and 35 in Block 3 in W. M. Derby's Subdivision of the Northeast ¼ of the Northeast ¼ of Section 15, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

16. The management of the corporation shall be vested in Three directors.

17. The name and address of the first board of directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

Name	Address Number Street City State	Terms for Which Elected
Maurice H. Nierenberg	801-Conway Bldg., Chicago, Ill.	Until the First
Mary Henry	801-Conway Bldg., Chicago, Ill.	Meeting of Board
Max Brooks Gurevitz	801-Conway Bldg., Chicago, Ill.	of Directors.

18. Subject to the conditions and limitations prescribed by "The General Corporation Act" of Illinois, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue and be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount and divided into shares, with a par value or without a par value, and to divide such capital stock into such classes, with such preferences, rights, values and interests as may be provided in the Articles of Incorporation, or any amendment thereof; and in case provision be made therefor in the Articles of Incorporation, or any amendment thereof, any and all classes of preferred stock may be issued in one or more series of the same class, each such series carrying such rate of dividends not exceeding eight per cent. (8%) per annum, or such lesser amount as may be fixed in the Articles of Incorporation, or any amendment thereof, and the shares of each such series being redeemable at such redemption price and bearing such particular designation as the Board of Directors subject to such restrictions as may be imposed in the Articles of Incorporation, or any amendment thereof, shall, by resolution, determine and fix prior to the issue of any such stock of such series: Provided, however, that whenever the Board of Directors shall, by resolution, have authorized any such series of preferred stock, a copy of such resolution, duly certified by the secretary or assistant secretary of the corporation, and under its seal, and the facts set up in such certificate verified by the oath of the President or Vice-President shall be transmitted to the Secretary of State, and if the same shall conform to law and to the Articles of Incorporation, and all amendments thereof, the same shall be filed in the office of the Secretary of State.

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey or transfer the same; and to acquire and

to own real property, improved or unimproved for the purpose of providing homes for its employes or aiding its employes to acquire and own homes and to improve, lease, mortgage, contract to sell, sell, convey or transfer the same, and to loan money to its employes for such purpose upon such terms as may be agreed upon.

To own, purchase, or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign;

To borrow money at such rate of interest as the corporation may determine without regard to or restrictions under any usury law of this State, and to mortgage or pledge its property, both real and personal, to secure the payment thereof;

To elect officers, appoint agents, define their duties and fix their compensation;

To lease, exchange or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital stock of the corporation at any annual meeting or at any special meeting called for that purpose;

To make by-laws not inconsistent with the laws of this State for the administration of the business and interests of such corporation;

To conduct business in this State, other states, the district of Columbia, the territories, possessions and dependencies of the United States and in foreign countries and to have one or

116 Book 557 Page 603

more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of the corporation;

In time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to loan money to the State or Federal government for war purposes;

To cease doing business and to surrender its charter;

To have and exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed.

19. An estimate of the per cent. of tangible property of the corporation to be used in Illinois for the following year is 100%.

20. An estimate of the per cent. of the business of the corporation which will be transacted at or from places of business in Illinois for the following year is 100%.

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

801-Conway Bldg., 111 W. Washington St., Chicago, Ill.

MAURICE H. NIERENBERG,
MARY HENRY,
MAX BROOKS GUREVITZ,
Incorporators.

State of Illinois } ss. No. 10337889
Cook County }

Filed for Record 1929 Apr 12 PM 1 30 and Recorded in Book 557 Page 599.

CLAYTON F. SMITH,
Recorder.

Oath and Acknowledgment.

State of Illinois, } ss.
Cook County }

I, Ben B. Nierenberg, a Notary Public in and for the County and State aforesaid, do hereby certify that on the 15th day of March, A. D. 1929, personally appeared before me Maurice H. Nierenberg, Mary Henry Max Brooks Gurevitz, to me personally known to be the same persons who executed the foregoing and severally acknowledged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

BEN R. NIERENBERG,
Notary Public.

(Seal)

Corporation for Pecuniary Profit.

Fees Payable in advance.

Statement of Incorporation of Forty-One Thirty-Six Wilcox Building Corporation.

Filed Apr 10 1929 William J. Stratton, Sec'y of State.

Incorporation Fees.

Initial fee of 1/20 of one per cent. on the issued capital stock, with a minimum fee of $20.00, also franchise fee as required by Section 129 of the General Corporation Act.

*Note.—In paragraph 10 you should set out a description of the rights and preferences of the holders of preferred stock, or any other provision for the regulation of the business and the conduct of the affairs of the corporation. In case of a building corporation you will also give in the same space a specific and definite description of the site of such building. In order to avoid delay read carefully each paragraph in the statement before interpolating the data required. Before execution of the statement compare every recital in the statement and see whether or not it balances with every other recital relating to the same matter.

117 Notice to Corporations.

Every incorporated company, other than banking, building and loan, and insurance companies, religious corporations and corporations organized not for pecuniary profit are required to make and file in the office of the Secretary of State in February of each year an annual report and severe penalties are inflicted for failure to do so.

Corporations are also required to file all amendments to their articles of incorporation.

The certificate of incorporation and all amendments thereto must be recorded in the office of the County Recorder of the County in which the business office of the corporation is located within ten days from the issuance thereof.

118 Box 1249.

Certificate of Incorporation of 4136 Wilcox Bldg. Corp.

State of Illinois,
Office of the
Secretary of State.

119 DEBTOR EXHIBIT 2.

Filed Nov 14 1935 Charles A. McDonald,
Master in Chancery

State of Illinois } ss.
County of Cook }

H. F. NEWSTEDT being duly sworn, on oath says that he is the president of the H. F. Newstedt Heating Company and has been its president since the company was organized; that the Master's Certificate executed by Isidore Brown, Master in Chancery of the Circuit Court of Cook County in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, case number B-207163, has not heretofore been assigned by the said H. F. Newstedt Heating Company and that it has the full power to execute an assignment of its interest in said certificate; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of the H. F. Newstedt Heating Company at this time and to pay a consideration for such assignment.

H. F. NEWSTEDT.

Subscribed and Sworn To before me this 7th day of May, A. D. 1935.

MARSHALL S. HOWARD,
(Seal) *Notary Public.*

120 DEBTOR EXHIBIT 3.

Filed Nov 14 1935 Charles A. McDonald,
Master in Chancery

For Value Received, the H. F. Newstedt Heating Company, a corporation, hereby sells, transfers, sets-over and assigns, to Myron D. Alexander all its right, title and interest in and

to a certain Master's Certificate, executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al, case number B-207163, dated the 5th day of August, 1931, showing the sale of the property described as:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois, and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

Said company has a 74.1 interest in said certificate which is the interest herein assigned.

In Witness Whereof the said Newstedt Heating Company, has caused these presents to be signed by its president, and has caused its corporate seal to be affixed this 7th day of May, 1935.

H. F. NEWSTEDT HEATING CO.,
By H. F. NEWSTEDT,
its president.

(Seal)

Attest:
CARRIE M. NEWSTEDT,
Secretary.

121 DEBTOR EXHIBIT 4.

Filed Nov 14 1935 Charles A. McDonald,

Master in Chancery

State of Illinois } ss.
County of Cook }

E. C. HOWARD being first duly sworn, on oath says that he received from Isidore Brown, Master in Chancery of the Circuit Court of Cook County, the Master's Certificate executed by said Master in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, et al, case number B-207163, on behalf of his client, the said H. F. Newstedt Heating Company, and that he has filed said certificate away in some file; that he has recently been looking for said

certificate, but has been unable to find it and believes said certificate is in his office, but has been mis-filed; that said certificate was not assigned and is in the same condition as when he received it from said Master; that he will continue to search for said certificate and believes it will be found in due course of time; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of said H. F. Newstedt Heating Company in and to said certificate and to pay a consideration therefor, and this affiant further promises that when he finds said original Masters Certificate, he will obtain a new assignment thereof from the said H. F. Newstedt Heating Company and deliver it to said Myron D. Alexander.

E. C. HOWARD.

Subscribed and Sworn To before me this 9th day of May, A. D. 1935.

MARSHALL S. HOWARD,
Notary Public.

(Seal)

122 DEBTOR EXHIBIT 5.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

For Value Received, the Morton Manufacturing Company, a corporation, hereby sells, transfers, sets-over and assigns to Myron D. Alexander all its right, title and interest amounting to, at least, twenty-five and nine-tenths per cent (25.9%) in and to a certain Master's Certificate executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al., case number B-207163, dated the 5th day of August, 1931, showing the sale of the property described as:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

In Witness Whereof the said Morton Manufacturing Company, a corporation, has caused these presents to be signed by its president and has caused its corporate seal to be affixed this 24th day of May, A. D. 1935.

MORTON MANUFACTURING COMPANY,
By CHARLES B. MORTON,
President.

Attest:
EARL M. SMITH,
Secretary.

123 DEBTOR EXHIBIT 6.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

State of Illinois } ss.
County of Cook }

CHARLES D. MORTON, being duly sworn on oath says that he is the president of the Morton Manufacturing Company, a corporation; that the Master's Certificate executed by Isidore Brown, Master in Chancery of the Circuit Court of Cook County in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, case number B-207163, has not heretofore been assigned by the said Morton Manufacturing Company, a corporation, and that it has full power to execute an assignment of its interest in said certificate; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of the Morton Manufacturing Company, a corporation, at this time and to pay a consideration for such assignment.

CHARLES D. MORTON,
President.

Subscribed and Sworn to before me this 24th day of May, A. D. 1935.

CHESTER C. SHERMAN,
Notary Public.

(Notarial Seal)

124 DEBTOR EXHIBIT 7.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

For Value Received the undersigned, Myron D. Alexander, hereby sells, transfers, sets over and assigns to 4136 Wilcox Building Corporation, a corporation, all his right, title and interest in and to a certain Master's Certificate executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al., case No. B-207163, dated the 5th day of August, A. D. 1931, showing the sale of the property described as—

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois, and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

In Witness Whereof the said Myron D. Alexander has hereunto affixed his hand and seal this 24th day of May, A. D. 1935.

MYRON D. ALEXANDER (Seal)

125 CHICAGO TITLE & TRUST COMPANY EXHIBIT 1.

Filed Oct. 30, 1935, Charles A. McDonald,
Master in Chancery.

Plactica—Superior Court of Cook Cook County (Decree).

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable Denis E. Sullivan, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and

holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday, being the Fourth day of May, in the year of our Lord one thousand nine hundred and thirty One and of the Independence of the United States of America, the one hundred and fifty Fifth.

Present:

The Honorable Denis E. Sullivan, Judge of the Superior Court of Cook County.

John A. Swanson, State's Attorney.

William D. Meyering, Sheriff of Cook County.

Attest: Frank V. Zintak, Clerk.

Be it remembered that heretofore, to-wit: on the 22nd day of May in the year of our Lord one thousand nine hundred and thirty One, the same being one of the days of the May Term of the Superior Court of Cook County the following among other proceedings were had in said Court and entered of record, to-wit:

126 IN THE SUPERIOR COURT OF SAID COUNTY,

To the March Term, A. D. 1931,

State of Illinois, } ss.
County of Cook, }

(Stamp) Entered May 22 1931 Judge Denis E. Sullivan.

The People of the State of Illinois *ex-rel.* Oscar E. Carlstrom, Attorney General, *vs.* Forty-One Thirty-Six Wilcox Building Corporation.	Dissolution of Corporation. In Chancery. No. 53735.

DECREE.

And now on this day comes the complainant, the People of the State of Illinois, upon the information of Oscar E. Carlstrom, Attorney General, and it appearing to the court from the writ issued herein to the sheriff of Cook County, Illinois, and his return thereon, that the defendant, the said

Forty-One Thirty-Six Wilcox Building Corporation cannot be found in said county, and it further appearing to the court that the said defendant's last known postoffice address as shown by the certificate of the Secretary of State was in the city of Chicago, Illinois, and upon due inquiry said defendant cannot be found and its place of residence upon diligent inquiry cannot be ascertained, and that due notice of the pendency of this proceeding has been given by publication for at least three (3) weeks successively, in accordance with the statute in such cases made and provided, by notice published in the National Corporation Reporter, a secular newspaper, printed, regularly issued and having a general circulation, and having been so regularly published for more than six (6) months prior to the first publication of said notice, in the county of Cook, and State of Illinois, the first insertion having been made on the 5th day of March, A. D. 1931, at least thirty (30) days prior to the first day of the present term of this court; that the Attorney General did, within ten (10) days of the first publication of such notice, send a copy thereof by mail, addressed to the corporation at its principal office in this State, as shown by the records in the office of the Secretary of State and has presented to this Court a certificate to that effect; and said defendant having been three times called in open court to plead, answer or demur to the complainant's bill, comes not, but herein makes default; it is therefore ordered, adjudged and decreed that the said bill be taken as confessed against the said Forty-One Thirty-Six Wilcox Building Corporation.

And thereupon this cause coming on for final hearing upon the bill taken as confessed by the said defendant, upon the exhibits and testimony heard in open court, and the cause having been argued by counsel, and the court being fully advised in the premises, doth find, that the court has jurisdiction of the subject matter of this cause and of all the parties herein named, that the material allegations contained in the complainant's bill are true as therein stated and that the equity of the cause is with the complainant.

The court further finds that the Forty-One Thirty-Six Wilcox Building Corporation was incorporated on the 10th day of April, 1929, under and in accordance with the provisions of an act of the General Assembly of the State of Illinois entitled, "An Act Concerning Corporations" approved April 18, 1872, in force July 1, 1872, As Amended.

That the location of the business office of the said defend-

ant was in the city of Chicago, county of Cook and State of Illinois.

That the said defendant and its board of directors have ceased to transact business as a corporation, have discontinued the exercise of corporate functions and have failed to comply with an act entitled, "An act in relation to corporation for pecuniary profit," in force July 1, 1919, and all subsequent amendments thereto, relative to the filing of annual reports and payment of license fees or franchise taxes.

That the notice required by section 7 of an Act entitled, "An Act requiring corporations to make annual report to the Secretary of State, and providing for the cancellation of the articles of incorporation for failure to do so, and to repeal a certain act therein named," in force July 1, 1901, and all subsequent amendments thereto, was mailed to the last known address of said defendant on or about the 10th day of January A. D. 1931.

That said corporation was certified by the Secretary of State to the Attorney General for failure to pay the franchise taxes and/or for to file annual report in accordance with the provisions of the General Corporation Act and was so certified for the purpose of instituting proceedings for dissolution of said corporation for abandonment and non-use of charter, for failure to file annual report and/or for failure to pay franchise tax, on the 15th day of November A. D. 1930.

That no report as required by the General Corporation Act and no payment of the license fees or franchise taxes and penalties due and legal costs of suit have been made by said corporation during the pendency of this suit.

It Is Therefore Ordered, Adjudged and Decreed by the court that the prayer of complainant's bill herein be, and the same is hereby granted.

It Is Further Ordered, Adjudged and Decreed by the court that the said defendant corporation the, Forty-One Thirty-Six Wilcox Building Corporation be, and the same is hereby dissolved, and that the charter and authority of said corporation be, and the same is hereby declared to be null and void and of no force and effect whatever, and that said defendant pay the cost of this suit, and that the clerk of this court certify the fact of such dissolution to the Secretary of State of Illinois.

DENIS E. SULLIVAN,
Judge.

MM

127 State of Illinois, } ss.
County of Cook. }

I, Frank V. Zintak, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree made and entered of record in said court in a certain cause lately pending in said Court on the Chancery side thereof, wherein The People ex rel. Oscar E. Carlstrom Etc. Were complainants and Forty-One Thirty-Six Wilcox Bldg. Corp. Was defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 10th day of October, A. D. 1935.

FRANK V. ZINTAK,
Clerk.

128 CHICAGO TITLE & TRUST COMPANY EXHIBIT 2.

Filed Oct. 30, 1935. Charles A. McDonald, Master in Chancery.

Certificate Number 10115.

STATE OF ILLINOIS
Office of The Secretary of State
(Emblem)

To all to whom these Presents Shall Come, ~~Greeting~~:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the Certificate of Decree of Dissolution of the Forty-One Thirty-Six Wilcox Building Corporation, dated May 22nd, 1931, the original of which is now on file and a matter of record in this office.

In ~~Test~~imony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 10th day of October A. D. 1935.

EDWARD J. HUGHES,
Secretary of State.

(Seal)

129 State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF SAID COUNTY.

March Term, A. D. 1931.

The People of the State of Illinois at the Relation of Oscar E. Carlstrom, Attorney General, *vs.* Forty-One Thirty-Six Wilcox Building Corporation. } General No. 53735 In Chancery.

To the Honorable William J. Stratton, Secretary of State, Springfield, Illinois.

I, Frank V. Zintak of the Superior Court, aforesaid, do hereby certify that a decree dissolving the above corporation was entered by the said Superior Court on the 22nd day of May, A. D. 1931, and that the original decree is on file in my office, and that I am the lawful keeper thereof.

Witness my hand and official seal this 26th day of June, A. D. 1931.

FRANK V. ZINTAK,
Clerk of the Superior Court of Cook County.

130 CHICAGO TITLE & TRUST COMPANY EXHIBIT 3.

Filed Oct 30 1935 Charles A. McDonald, Master in Chancery.

Transcript of Proceedings Form 36A

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable D. J. Normoyle one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and holden at Chicago, in the Court House in said County and State, on the third Monday, (being the 18th day) of June in the year of Our Lord one thousand nine

hundred and 31, and of the Independence of the United States the one hundred and 55.

Present, Honorable D. J. Normoyle one of the Judges of the Circuit Court of Cook County, State of Illinois.

JOHN A. SWANSON, *State's Attorney*
WILLIAM D. MEYERING, *Sheriff.*

Attest:
THOMAS O. WALLACE, *Clerk.*

Be It Remembered, that at the term aforesaid, to-wit: On the 16th day of July A. D. 1931, the following among other proceedings were had and entered of record in said Court, to-wit:

131 Judge D. J. Normoyle
Jul 10 1931

State of Illinois } ss:
County of Cook }

IN THE CIRCUIT COURT OF COOK COUNTY.

H. F. Newstedt Heating Company, a corporation
vs.
4136 Wilcox Building Corporation, a corporation, *et al.* } B-207163

DECREE.

This day comes the complainant, H. F. Newstedt Heating Company, a corporation, by E. C. Howard, its solicitor, and also comes the defendants, Morton Manufacturing Company, a corporation by William J. Ruttenberg, its solicitors, the Madison and Kedzie State Bank, a corporation by Ryan, Condon and Livingston, its solicitors and it appearing to the court that the defendants 4136 Wilcox Building Corporation, a corporation and the Chicago Title and Trust Company, as trustee have been heretofore defaulted herein and said bill of complaint taken as confessed by them and this cause coming on to be heard upon the bill of complaint of said complainant, the answer in nature of an intervening petition of Morton

Manufacturing Company, a corporation, the answer of the Madison-Kedzie State Bank and the replication of said complainant to said answers and the report of Isidore Brown, one of the Masters in Chancery to whom this cause has been heretofore referred and it appearing to the Court that no objections or exceptions have been filed to said report and the court having read said report and having heard arguments of counsel and being fully advised in the premises, finds that said report ought to be approved.

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The Court further finds that it has jurisdiction of all the parties to said suit and of the subject matter hereof.

The Court further finds as follows:

That on towit, the 23rd day of February, 1929 and for some time prior thereto, the 4136 Wilcox Building Corporation, a corporation, was the owner of the following described real property:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois and commonly known as described as number 4136 Wilcox Avenue, Chicago, Illinois.

That on said 23rd day of February, 1929, said 4136 Wilcox Building Corporation, by its president, Max Gurevitz, entered into a written contract with the complainant herein for the furnishing and installation of a one pipe heating system in the building located on the premises involved herein for in accordance with certain specification set forth in said contract; that the contract price for the labor and materials to be furnished under said contract, was the sum of Eight Thousand Five Hundred and Fifty Dollars ($8550.00) payable as follows: 85 per cent when the job was roughed in and the balance when the job was completed and tested.

The Master further finds that pursuant to the terms of said contract the complainant herein commenced to furnish the labor and materials necessary under said contract and completed said work on the 27th day of September, 1929.

That the sum of Eight thousand and fifty dollars ($8050)

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was paid to the complainant on account of the moneys due to it under the terms of said contract leaving a balance due to it in the sum of Five hundred dollars ($500.00)

That on the 11th day of January, 1930 said complainant filed its claim for lien in the office of the Clerk of the Circuit Court of Cook County, Illinois against the said premises involved herein in the sum of Five hundred dollars ($500.00) in due form of law and in accordance with the statute in such case made and provided.

That no further sums were paid to said complainant on account of its aforesaid contract; that the labor and materials furnished by said complainant for the said premises entered into and became a permanent part of the improvements located thereon and enhanced the value thereof to an amount in excess of the cost of said labor and materials; that due to the enhancement in value of said premises, said complainant has a valid and subsisting lien against said premises for the balance of Five hundred dollars ($500.00) due and owing to it together with interest thereon at five per cent per annum from September 27, 1929.

That on the 10th day of June, 1929 the said 4136 Wilcox Building Corporation, by Max Gurevitz, its president, entered into a written contract with the Morton Manufacturing Company, a corporation for the furnishing of thirty-five bath room cabinets for use in the building located on said premises; that the contract price for said materials was the sum of Two hundred four dollars and seventy-five cents ($204.75).

That pursuant to the terms of its contract said Morton Manufacturing Company commenced to furnish the materials required of it under its said contract on or about the 2nd day

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of August, 1929 and completed the delivery of such materials on the 24th day of September, 1929.

That thereafter, on the 28th day of January, 1930 said Morton Manufacturing Company, a corporation filed its claim for lien in the office of the Clerk of the Circuit Court of Cook County, Illinois against said premises, under number 176209, in the sum of Two hundred four dollars and seventy-five cents.

That on the 24th day of June, 1930 the sum of Twenty-five dollars was paid to said Morton Manufacturing Company on

account of the moneys due it under its claim for lien aforesaid leaving a balance due and owing said Morton Manufacturing Company for the materials supplied for said premises, in the sum of One hundred seventy-nine dollars and seventy-five cents.

That the materials furnished by said Morton Manufacturing Company, in connection with said premises, entered into and became a part of the improvements located thereon and enhanced the value thereof to an amount in excess of the cost of said materials; that due to the enhancement of the value of said premises, the said company has a valid and subsisting lien against said premises for the balance of One hundred seventy-nine dollars and seventy-five cents ($179.75) due and owing to it together with interest thereon at the rate of five per cent per annum from the 24th day of September, 1929.

That the liens of said complainant and said Morton Manufacturing Company, a corporation are on a parity each with the other; that said lien claimants have valid and subsisting liens against said premises for the respective amounts due to them together with interest thereof which liens are in every respect similar and are of the same force and effect; that the

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liens of the complainant and said intervening petitioner are prior, paramount and superior to the rights and interests of all other parties to this suit who have been duly served with process; that said liens are subject however, to the outstanding rights of the owners and holders of the principal notes and interest coupons secured by the trust deed against said premises recorded prior to the time said liens attached.

It Is Therefore Ordered, Adjudged and Decreed that the above entitled cause be and the same is hereby dismissed as to Unknown Owners.

It Is Further Ordered, Adjudged and Decreed that said Master's Report be and the same is hereby approved and confirmed.

It Is Further Ordered, Adjudged and Decreed that the defendant, 4136 Wilcox Building Corporation, a corporation, pay to the complainant, H. F. Newstedt Heating Company, a corporation, within three days from the date of the entry of this decree, the sum of Five Hundred Dollars ($500.00) with interest thereon at the rate of five per cent per annum from the 27th day of September, 1929 until paid and Master's fees

and including the charges of the court reporter engaged by said Master, hereby taxed in the sum of $64.90 and that said defendant pay to said Morton Manufacturing Company, a corporation, within three days hereof, the sum of One Hundred Seventy-nine and 75/100 Dollars ($179.75) with interest thereof at the rate of five per cent per annum from the 24th day of September, 1929 until paid.

It Is Further Ordered, Adjudged and Decreed that in default of said payments within the time hereinabove specified, that then the above described premises, towit:

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Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois, and commonly known as 4136 Wilcox Avenue, Chicago, Illinois.

or so much thereof as may be sufficient to realize the amount so due the complainant and the Morton Manufacturing Company, a corporation as aforesaid for principal interest and costs of this suit and which may be sold separately without material injury to the parties in interest, be sold at public auction, for cash, to the highest and best bidder, at the rooms of the Chicago Real Estate Board, Number 57 West Monroe Street, Chicago, Illinois.

It Is Further Ordered, Adjudged and Decreed that Isidore Brown, a Master in Chancery of this court, shall execute this decree; that said Master give public notice of the time, place, and terms of said sale by previously publishing the same once each week for three successive weeks in a secular newspaper of general circulation in Cook County, Illinois; that said complainant or the Morton Manufacturing Company, or any of the parties to this suit may become the purchaser or purchasers.

The Master may at any time in his discretion, for good cause shown, adjourn the sale so advertised; he shall execute a certificate of sale to the purchaser or purchasers at such sale as required by law and shall cause a duplicate certificate to be recorded in the Recorder's office of Cook County, Illinois; that said certificate shall specify the premises purchased, the sum paid therefor and the time when said purchaser shall be

entitled to a deed unless said premises shall be redeemed according to law.

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137 —7—

Out of the proceeds of such sale said Master shall retain his fees, disbursements and commissions; he shall then pay to said complainant or its solicitor of record and to the Morton Manufacturing Company, or its solicitor of record, the amounts due them under this decree with interest thereon at the rate of five per cent per annum from the date of this decree to the date of such sale and all taxable costs advanced or paid by said complainant and the Morton Manufacturing Company, if the remainder of the proceeds be sufficient; if not sufficient, he shall apply the remainder to the extent to which it may reach in satisfaction of the amounts due said complainant and said Morton Manufacturing Company in the ratio that their respective claims as found in this decree, bear to the remainder of such proceeds, and report the deficiency; if there shall be a surplus, he shall bring it into court and abide the further order of the Court therein.

It Is Further Ordered, Adjudged and Decreed that the defendants, and all persons claiming thru or under them, be forever barred and foreclosed from all right and equity of redemption in and to said premises, or any part thereof so sold, if the same are not redeemed within the time required by law and that at the expiration of fifteen months next after the day of said sale, if the premises so sold are not redeemed as aforesaid, said Master, or his successor in office shall execute and deliver to the purchaser or purchasers at such sale, his or their heirs, executors, administrators and assigns, a good and sufficient conveyance of all the right, title and interest of said defendants in and to said premises or any portion thereof which shall have been sold as aforesaid.

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It Is Further Ordered, Adjudged and Decreed that upon the execution and delivery of such conveyance as aforesaid, the said purchaser or purchasers shall be let into possession of the above premises or such portion thereof so conveyed to them as aforesaid and that any of the parties to this cause, who may be in possession of said premises or any person claiming thru or under such defendants, who, since the com-

mencement of this action, has come into possession thereof, shall upon the production of such Master's deed or conveyance, and a certified copy of the order of this court confirming the report of such sale, shall surrender possession thereof to such purchaser or purchasers, his or their heirs, successors, administrators or assigns and that in default of their so doing, that a writ of assistance issue out of this court.

It Is Further Ordered, Adjudged and Decreed that said Master in Chancery report his proceedings to the court at as early a date as is practicable and that this cause stand continued for the purpose of such report and such further proceedings in connection therewith as may be necessary and proper for the purpose of carrying this decree into effect.

Enter:

D. J. NORMOYLE,
Judge.

Examined and approved.

ISIDORE BROWN,
Master in Chancery.

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139 State of Illinois, } ss.
County of Cook }

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree had and entered of record on the 10th day of July, A. D. 1931 in a certain cause lately pending in said Court, on the Chancery side thereof, between H. F. Newstedt Heating Co. and 4136 Wilcox Building Corp., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 10th day of October, 1935.

JOHN E. CONROY,
Clerk.

(Seal)

140 (Endorsed): Gen'l No. B207163 Circuit Court of Cook County Newstedt Heating Co. *vs.* 4136 Wilcox Bldg. Corp.

141 EXHIBIT NO. CHI. T. & T. CO. EX. 4.

RULING RESERVED.

Filed Oct. 30, 1935, Charles A. McDonald,
Master in Chancery.

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable Caverly, one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and holden at Chicago, in the Court House in said County and State, on the third Monday, (being the 17th day) of August in the year of Our Lord one thousand nine hundred and 31 and of the Independence of the United States the one hundred and 55.

Present, Honorable Caverley one of the Judges of the Circuit Court of Cook County, State of Illinois.

John A. Swanson, State's Attorney.

William D. Meyering, Sheriff.

Attest:

THOMAS D. WALLACE,
Clerk.

Be It Remembered, that at the term aforesaid, to-wit: On the 21st day of August, A. D. 1931, the following among other proceedings were had and entered of record in said Court, to-wit:

142 State of Illinois, } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Aug. 21, 1931.

Judge John R. Caverly.

H. F. Newstedt Heating Co., a corporation,
vs.
4131 Wilcox Building Corporation, *et al.* } No. B-207163

On motion of E. C. Howard, Solicitor for Complainant, to approve and confirm the Master's Report of sale and distribution, filed herein, and it appearing to the Court that the Master in Chancery has in all things conformed to the law and the order of this Court, in conducting the foreclosure sale herein, and in distributing the proceeds derived from said sale, it is, therefore, Ordered that the said Master's Report of Sale and Distribution, be and the same is hereby approved and confirmed.

JOHN R. CAVERLY,
Judge.

143 State of Illinois, } ss.
County of Cook. }

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Order had and entered of record on the 21st day of August, A. D. 1931 in a certain cause lately pending in said Court, on the Chancery side thereof, between H. F. Newstedt Heating Co. and 4131 Wilcox Bldg. Corp., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 10th day of October, 1935.

JOHN E. CONROY,
(Seal) *Clerk.*

144 Gen'l No. B 207163. Circuit Court of Cook County.
H. F. Newstedt Co. *vs.* 4131 Wilcox Bldg. Corp.

145 CHICAGO TITLE & TRUST COMPANY EXHIBIT 5.

Filed Oct 30 1935 Charles A. McDonald, Master in Chancery.

State of Illinois, } ss.
County of Cook. }

I, Edward J. Kaindl, Recorder of Deeds, and Keeper of the Records of said Recorder of Deeds, in and for said County, in the State aforesaid, Do Hereby Certify, that the following is a true and correct photographic copy of the record of a certain Instrument filed in said Office the Tenth day of August A. D. 1931 as Document No. 10951481 and recorded in Book 29414 of Records, at Page 508.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Chicago, this Ninth day of October A. D. 1935.

EDWARD J. KAINDL,
Recorder of Deeds.

(Seal)

146 Master's Certificate of Sale

Book 29414 Page 508

State of Illinois, } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY

In Chancery

H. F. Newstedt Heating Company, a corporation
vs.
4136 Wilcox Building Corporation, a corporation, *et al.* } General No. B 207163

I, Isidore Brown, Master in Chancery of the said Circuit Court of Cook County, Do Hereby Certify, that in pursuance of a decree entered on the 10th day of July A. D. 1931 by the said Court in the above entitled cause, I duly advertised according to law the premises hereinafter described, to be sold at public vendue, to the highest and best bidder for cash at the

hour of one o'clock in the afternoon, (daylight saving time) on Wednesday the 5th day of August A. D. 1931 at the Judicial Salesrooms of the Chicago Real Estate Board, Number 57 West Monroe Street, Chicago, in said Cook County; That at the time and place so aforesaid appointed for said sale, I attended to make the same and offered and exposed said premises for sale at public vendue, to the highest and best bidder for cash. Whereupon H. F. Newstedt Heating Company, a corporation, and Morton Manufacturing Company, a corporation, offered and bid therefor the sum of Eight Hundred Eighty-one Dollars Ninety-one Cents 881.91; and that being the highest and best bid offered therefor, I accordingly struck off and sold to said bidder, for said sum of money, the said premises which are situated in the County of Cook and State of Illinois, and are described as follows, to-wit: Lots Thirty Four (34) and Thirty Five (35) in Block Three (3) in W. M. Derby's Subdivision of the North East Quarter of the North East Quarter of Section Fifteen (15), Township Thirty Nine (39) North, Range Thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois, and commonly known as 4136 Wilcox Avenue, Chicago, Illinois, in the following proportions:

H. F. Newstedt Heating Company, a corp.... 74.1%
Morton Manufacturing Company, a corp.... 25.9%

And I Do further Certify, that the said H. F. Newstedt Heating Company, a corp., and Morton Manufacturing Company, a corp., their legal representives or assigns, will be entitled to a deed of said premises on the 6th day of November A. D. 1932, unless the same be redeemed according to law.

Witness my hand and seal this 5th day of August A. D. 1931.

ISIDORE BROWN, (Seal)
Master of Chancery of the Circuit Court of Cook County

147 Book 29414 Page 509

Assignment

For Value Received ..... hereby sell, assign and transfer unto ..... all of ..... right, title and interest in and to the within Master's Certificate and the real estate and premises therein described.

Witness ..... hand..... and seal..... this ..... day of ..... A. D. 19....

.....(Seal)
.....(Seal)
.....(Seal)

Box 37

Isidore Brown
Master in Chancery.
to
H F. Newstedt Heating Co. and Morton Manufacturing Co.

Duplicate

Master's Certificate of Sale

County of Cook, } ss. No. .....
State of Illinois. }

This Instrument was filed for record in the Recorder's Office of ..... Cook County aforesaid on the ..... day of ..... A. D. 19.... at ..... o'clock ....M. and recorded in Book ..... of ..... on page .....

.....
Recorder.

Isidore Brown
Suite 1814
One La Salle Street
Chicago
10951481

State of Illinois } ss. No.
Cook County }

Filed for Record
1931 Aug 10 AM 9 39
And Recorded in Book Page
Recorder
Clayton F. Smith

148 Wherefore, the Chicago Title and Trust Company, a corporation, as successor trustee, appellant, prays that the above statement of evidence be settled, approved and allowed by the court as a true, full, correct and complete statement of all of the evidence taken and given before Charles A. McDonald, special master of this court, and reported to the court, and heard and considered by the court on the hearing thereof, for the use on the appeal taken on the 4th of February, 1936, to the United States Circuit Court of Appeals for the Seventh Circuit.

WINSTON, STRAWN & SHAW,
Attorneys for the Chicago Title and Trust Company, a corporation, as Successor Trustee.

149 Certificate of Judge.

rtificate of Judge.

The foregoing statement of evidence is, in all respects, hereby approved and settled as a true and complete statement of the evidence adduced before, and reported by, Charles A. McDonald, special master in chancery of this court to whom this cause had been referred, and all of the evidence adduced, heard and considered on the hearing and trial by the court of the above entitled cause, and at the suggestion of attorneys for Forty-One Thirty-Six Wilcox Building Corporation,

It is Ordered that those parts thereof in question and answer form be so embodied in said statement of evidence in the exact words of the witness Fay Fischel; and said statement of evidence is Ordered filed and included in the record for the purpose of the appeal.

JOHN P. BARNES,
U. S. District Court Judge.

Dated February 26th, 1936.

150 (Endorsed): In the District Court of the United States * * (Caption—60278) * * Statement of Evidence Under Equity Rule 75. Lodged—Feb 19-1936 Henry W. Freeman, Clerk. Filed Feb. 26 1936 Henry W. Freeman, Clerk.

151 And on, to wit, the 19th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit: Filed Feb. 1 1936.

152 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

NOTICE.

To: Messrs. Karlin & Kohen, 11 South LaSalle St., Chicago, Ill. Joseph Z. Willner, Suite 751-10 So. LaSalle St., Chicago.

Please Take Notice that on Wednesday the 19th day of February, A. D. 1935, we will lodge with the Clerk of the U. S. District Court for the Northern District of Illinois, Eastern Division, at his office in the Federal Building, Chicago, Illinois, a statement of the evidence adduced at the hearings of the above entitled cause under Equity Rule 75, and that we will apply to his Honor, John P. Barnes, one of the judges of said court, for the settlement and approval of the Statement of Evidence as a true, complete and properly prepared statement in that behalf and to become a part of the record therein on Friday the 21st day of February, A. D. 1936, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, in the room usually occupied by him as a court room in the Federal Building, Chicago, Illinois, or in his absence before such other judge as may be sitting in his place and stead; at which time and place you may appear if you see fit.

WINSTON, STRAWN & SHAW,
Attorneys for Chicago Title and Trust Company, a corpn., as Successor Trustee.

Received a copy of the above and foregoing notice, together with a copy of the Statement of Evidence therein referred to, this 19th day of February, A. D. 1936.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for 4136 Wilcox Building Corporation.

Dec. 17, 35.

25 And on, to wit, the 17th day of December, 1935, came the Special Master and filed in the Clerk's office of said Court a certain Master's Report in words and figures following, to wit:

26 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

MASTER'S REPORT ON GOOD FAITH AND PETITION AND MOTION TO DISMISS.

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The undersigned, Charles A. McDonald, one of the Masters in Chancery of the United States District Court for the Northern District of Illinois, Eastern Division, to whom as such Master in Chancery, the above entitled cause was heretofore by Order of Court, referred (1) to examine the petition filed herein and the answer thereto, and (2) to take testimony thereon and to determine whether or not said petition is in proper form and (3) to determine whether or not said petition was filed in good faith, and (4) to pass upon the question as to whether said petition should be dismissed in accordance with the motion of Chicago Title & Trust Company, as successor Trustee, respectfully reports as follows:

27 1. That he was attended in his office by attorneys for the Debtor Corporation and for the Trustee and by various parties in interest herein; that a transcript of the testimony and exhibits offered and received at the hearings herein is attached hereto and made a part hereof.

2. That on June 13, 1935, Forty-One Thirty-Six Wilcox Building Corporation, an alleged corporation, filed its petition herein, praying inter alia for an Order approving said petition as properly filed under Section 77-B of the Bankruptcy act and asking that it be granted all other and further relief to which it may be entitled.

3. That thereafter, Chicago Title & Trust Company, a Corporation, as successor Trustee under Trust Deed recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10325493, given to secure the payment of certain bonds and covering the property described in the Debtor's petition,

filed its answer setting up various matters as grounds for the dismissal of said petition and denying that said petition filed herein by the Debtor was filed in good faith or was properly filed.

28 4. It appears from the pleadings and the proofs herein, that the principal asset of the Debtor is the land and apartment hotel building known as the Wilcox Apartments, located at 4136 West Wilcox Street, in Chicago, Illinois, consisting of a three-story, Corridor type, apartment hotel building containing 35 apartments, together with furniture, fixtures and equipment therein contained. Said real estate being more specifically described as follows:

"Lots thirty-four (34) and thirty-five (35), in Block Three (3) in W. M. Darby's Subdivision of the North East Quarter (N. E. ¼), of the North East Quarter (N. E. ¼), of Section Fifteen (15), Township Thirty-Nine (39) North, Range Thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois."

5. That said property was conveyed to the Madison and Kedzie State Bank for the purpose of securing an indebtedness of Ninety-Five Thousand Dollars ($95,000.00) by Trust Deed, which Trust Deed was recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 10325493, that the Chicago Title & Trust Company was named as Successor Trustee in said Trust Deed and is now acting as such.

29 6. That said property is also subject to the encumbrance of a Trust Deed to the Chicago Title & Trust Company, as Trustee, to secure a junior mortgage indebtedness in the sum of Fifteen Thousand Dollars ($15,000.00), dated November 26, 1929, and recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10565961.

7. That on or about November 10, 1931, M. M. Hein filed a Bill in the Superior Court of Cook County, Illinois, Case No. 546629 entitled M. M. Hein *vs.* One Thirty-Six Wilcox Building Corporation, et al, wherein it was sought to foreclose the lien of said junior mortgage Trust Deed above described as Document No. 10565961, which bill is still pending and undisposed of.

8. That the Metropolitan Trust Company was appointed as Receiver under and by virtue of said Bill to take possession of all of the assets and of the property of the Debtor and that said Receiver is still in full possession, control and charge of all of said property.

9. That thereafter there was filed in the Superior Court of Cook County, case entitled Madison & Kedzie State Bank *vs.* Max Gurevitz, *et al.*, Superior Court No. 547687, to foreclose the lien of the first mortgage Trust Deed hereinabove described, as Document No. 10325493, which bill is still pending and undisposed of.

10. It also appears that a certain Mechanic's Lien suit was filed against the Debtor Corporation by H. F. Neustedt Heating Company, a Corporation, in the Circuit Court of Cook County, entitled H. F. Neustedt & Company, a Corporation *vs.* Forty-One Thirty-Six Wilcox Building Corporation, *et al.*, case No. B-207163. That in said proceeding a decree was entered, a sale was had and a Master's Certificate issued, which said Master's Certificate was issued by Master in Chancery, Isidore Brown, dated August 5, 1931. That no deed ever issued through, or under said Master's Certificate and that said Master's Certificate was purchased and now is the property of the Debtor.

11. It also appears that on May 4, 1931, a decree was entered in the Superior Court of Cook County, Illinois, in the case of People of the State of Illinois, ex rel Oscar E. Carlstrom, attorney general, *vs.* Forty-One Thirty-Six Wilcox Building Corporation, Case No. 53735 in and by which decree it was ordered, adjudged, and decreed that the defendant corporation, Forty-One Thirty-Six Wilcox Building Corporation be and the same is hereby dissolved.

12. It further appears from the evidence that the Debtor Corporation was organized under the Laws of the State of Illinois, on April 10, 1929; that it was authorized to issue fifty shares of common stock having a par value of $100.00 each, all of which stock was issued and is still outstanding.

13. On the question of whether or not the Debtor Corporation having been dissolved by decree of court more than two years prior to the filing of its petition under Section 77-B of the Bankruptcy Act, can now avail itself of said Act, the Master finds that the Statutory right given to a dissolved Illinois Corporation to prosecute or defend suits at law or in equity brought by or against the corporation at any time within two years from the date of the Decree of Dissolution includes the right of such corporation to thereafter prosecute or defend such an action begun at any time within said period to its ultimate termination regardless of the time required to litigate the cause.

32 14. The statutory two year period has reference to the commencement and the defense of an action and not to the termination thereof, otherwise the right conferred by the statute upon a dissolved corporation could not be availed of if the corporation were held to be civilly dead for all purposes at the expiration of two years from the date of the entry of the decree of dissolution.

15. The Debtor corporation is still a party to the undisposed of litigation in the two foreclosure proceedings pending in the State Courts notwithstanding the fact that the decree dissolving the corporation was entered May 4, 1931, or more than four (4) years ago and in litigating these proceedings in the State Court, the Debtor Corporation must be regarded as a corporation de-jure possessing property rights enuring to the benefit of the creditors and stockholders which a Court with Equity powers will fully protect and administer, until the litigation is disposed of completely.

16. The parties to these proceedings have apparently recognized this right of the Debtor Company to continue to litigate the questions therein involved and no objection
33 thereto has been interposed in the State Court proceedings and it was stipulated in the Record (November 13, 1935, Page 27) that Edward Halligan is attorney of record for the Forty-One Thirty-Six Wilcox Building Corporation, in the case entitled Chicago Title & Trust Company, a Corporation *vs.* Max Gurevitz, Superior Court, Case No. 547687, and that such attorney has been receiving from the Receiver the property reports and accounts which reports and accounts have been checked by said attorney for the Corporation. (See Petitioners Exhibit #1).

17. The Corporation having a legal existence for the purpose of defending said suits and for the purpose of defending its assets and property rights in the litigation in question, it follows that its Board of Directors are empowered to take such action to protect the assets and property rights of the company in the litigation as will best serve the interests of the creditors and stockholders and hence, the Board of Directors of the Corporation might rightfully pass a resolution authorizing the filing of a petition herein which action is in effect the transferring of the litigation pending in the State Courts to the Federal Court in Bankruptcy for adjudication.

34 18. The Bankruptcy Act under Section 77-B thereof, confers paramount and exclusive jurisdiction upon

the Federal Court over the Debtor Corporation seeking relief thereunder and its property wherever situated, and this Act affords additional relief to insolvent corporations, which supersedes and stays a pending State Court action wherever availed of in good faith.

19. On the question of good faith of the Debtor Corporation, in filing its petition herein, it appears from the testimony of Mrs. Fay Fischel, that all of the stock of the Corporation is owned by herself, her father Mr. Hyman Schulman and her brother Mr. Sam Schulman. That the same three persons are the Directors of the Corporation, that they had an informal meeting in which the filing of the petition herein was discussed and that she, as President of the Company, was authorized to file the petition under Section 77-B of the Bankruptcy Act for Reorganization of the property. Joseph J. Karlin, Attorney for the Debtor has also testified to the above facts (Page 24 Record of November 13, 1935).

20. That although there was some irregularity in the meeting of the stockholders and directors of the corporation
35 at which the alleged resolution was passed, authorizing the filing of the petition and that the minutes of said meeting were not properly reduced to writing, the Master is still of the opinion that such resolution was sufficient to authorize the filing of this petition.

21. That under Section 77-B of the Bankruptcy Act, the successor Trustee in the Trust Deed being foreclosed on the Debtor's property in the State Court, is not a "creditor" within the meaning of the Bankruptcy Act and therefore cannot be heard on the question of good faith of the Debtor Company in filing its petition herein.

22. Some testimony was offered herein to the effect that the owner of approximately Forty Thousand Dollars ($40,000.00) of the first mortgage bonds out of a total of Ninety-five Thousand Dollars ($95,000.00) had opposed the entry of a decree in the foreclosure proceeding in the State Court and that therefore there is no probability of a Reorganization being worked out in the State Court proceeding, but the Master does not consider it necessary to make a finding at this time as to the probability of a feasible Plan being submitted in this proceeding.

36 23. Until a Plan of Reorganization has been promulgated and submitted for approval, the question of its feasibility or fairness cannot be determined nor can it be said in advance that the proposed Plan will be rejected. Section

77-B of the Bankruptcy Act contemplates that the Debtor Corporation be afforded the opportunity of presenting a proposed Plan of Reorganization for approval or disapproval and if the Plan is not adopted, the act expressly provides for the procedure to be followed thereafter.

The Master, therefore, recommends:

(1) That an Order be entered finding that the Debtor Company's Petition filed herein contains the requisite jurisdictional allegations and that said petition was filed in good faith.

(2) That this Court has jurisdiction paramount and exclusive over the Debtor Corporation and its property.

(3) That the proceedings pending in the State Courts hereinabove referred to be stayed until the further Order of this Court.

(4) That the Debtor Corporation or its attorneys herein be directed to be a proposed Plan of Reorganization
37 herein within a reasonable time to be fixed by the Court,

Respectfully submitted:

CHARLES A. MCDONALD
Suite 3600—135 So. La Salle St.
Chicago, Ill.—Central 8386
Master in Chancery.

Dated: December 9, 1935.

38 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

MASTER'S CERTIFICATE OF SERVICE,

I, Charles A. McDonald, a Master in Chancery, of the United States District Court, for the Northern District of Illinois, Eastern Division, do hereby certify that I rendered services in the above entitled cause as follows:

Procured the files;

Examined petition and pleadings therein;

Held several hearings on the Petition of Good Faith and Motion to Dismiss said Petition;

Prepared and filed herewith my Master's Report on said Petition and Motion.

In my opinion a fair and reasonable fee for my services rendered in this matter to date, would be the sum of Two Hundred Fifty Dollars ($250.00), of which $100.00 has been de-

posited. I, therefore, respectfully request that I be allowed the additional sum of $150.00.

Respectfully submitted:

CHARLES A. MCDONALD
Suite 3600—135 So. La Salle St.
Chicago, Ill.—Central 8386
Master in Chancery.

Dated: December 9, 1935.

ed Jan. 7, 6.

39 And afterwards, to wit, on the 7th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

40 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Tuesday, January 7, 1936.

Present: Honorable John P. Barnes, Judge of said Court.

On motion of solicitors for Chicago Title & Trust Company
It Is Ordered that leave be and the same is hereby given to file instanter Exceptions to the Report of Special Master McDonald and
It Is Ordered that the hearing on the Master's Report and the Exception thereto be and the same is hereby set for hearing January 13, A. D. 1936.

41 And on, to wit, the 7th day of January, 1936 came the Chicago Title & Trust Company by its attorneys and filed in the Clerk's office of said Court certain Exceptions in words and figures following, to wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan 1936.

* * (Caption—60278) * *

EXCEPTIONS OF CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE, TO THE REPORT OF CHARLES A. McDONALD, ONE OF THE MASTERS IN CHANCERY OF SAID COURT, ON THE PETITIONS OF THE ALLEGED DEBTOR HEREIN AND THE ANSWER THERETO OF SAID CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE.

Now comes Chicago Title and Trust Company, a corporation as Successor Trustee under the trust deed made by Max Gurevitz, a Bachelor, to Madison & Kedzie State Bank, a corporation, dated March 20, 1929 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on April 1, 1929 in Book 26737 of Records, at Page 85, as Document No. 10325493, and excepts to the report of Charles A. McDonald, Master in Chancery, dated December 9, 1935, in the following respects:

(1) Said Master has erred in not finding that under the laws of the State of Illinois, the Forty-one Thirty-six Wilcox Building Corporation became and was dissolved prior to the filing of the petition herein and ceased to have a juridical existence for the purpose of filing said petition;

43 (2) Said Master has erred in finding that said Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the Master's Certificate of Sale issued pursuant to the decree entered in case No. B-207163 in the Circuit Court of Cook County, Illinois, redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring ownership of said Certificate of Sale or of said premises;

(3) The findings of fact and conclusions of law made and reached by said Master are a denial of full faith and credit by this court to the public acts and to the judicial records and proceedings of the courts of the State of Illinois;

(4) Said Master has erred in concluding that the filing of the petition herein by the alleged Debtor is a continuation of the foreclosure proceedings brought by this objector in the Circuit Court of Cook County, Illinois;

(5) Said Master has erred in finding that said petition was properly filed;

(6) Said Master erred in finding that said petition was filed in good faith;

(7) Said Master erred in finding that this objector is not a creditor within the meaning of the Bankruptcy Act as amended and in refusing to permit this objector to question the good faith of the alleged Debtor in filing its petition herein;

Said Master erred in his findings of fact and conclusions of law in the respects hereinabove enumerated, in all of which respects this objector excepts to the report of said master and submits that the same should be altered and that said
44 petition of the alleged debtor herein be dismissed.

Respectfully submitted,

CHICAGO TITLE AND TRUST COMPANY, a corporation, as Successor Trustee,
By WINSTON, STRAWN & SHAW and
By A. EDMUND PETERSON
Its Attorneys.

1 Jan. 1936.

45 And afterwards, to wit, on the 13th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER.

This cause coming on to be heard upon the motion of Karlin and Cohen, attorneys for the debtor corporation and the Court being fully advised in the premises

Be It, and It Is, Therefore, Ordered:

That leave be and is hereby given to Joseph Z. Willner to enter his appearance as joint counsel with Karlin and Cohen as attorneys for the debtor corporation herein.

Enter:

BARNES
Judge.

Dated January 13, 1936.

47 And afterwards, to wit, on the 14th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears that following entry, to wit: Entered Jan 14, 1936.

48 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

At Chicago, for the Northern District of Illinois, before his Honor, Judge John P. Barnes, this 14th day of January, A. D. 1936.

This cause coming on to be heard upon the Master's Report, on the petition of the Forty-One Thirty-Six Wilcox Building Corporation, a corporation, heretofore filed on the 13th day of June, A. D. 1935, and the answers filed thereto, pursuant to Section 77-B, Chapter 8, of the Acts of Congress relating to Bankruptcy, and upon the motion of the Debtor to have said petition approved as having been properly filed, due and proper notice having been given to all parties entitled thereto, and the Court having duly considered said Master's Report, concerning the facts, and his conclusions therein, and the Court having heard the arguments of counsel, and being duly apprised in the matter,

Does Hereby Order, Adjudge and Decree:

1. That the Report of said Master, the Honorable Charles A. McDonald, be and the same is hereby confirmed and approved, and all objections and exceptions filed thereto are hereby overruled.

2. That the petition of the Debtor filed herein, under Section 77-B, of Chapter 8, of the Acts of Congress, relating to Bankruptcy, be and the same is hereby approved, as being properly filed and in good faith.

49 3. And this cause further coming on to be heard upon motion of Debtor for the appointment of a Temporary Trustee for the said Debtor and its property, and it appearing to the Court that due and proper notice of the presentation of said motion has been made upon all parties in interest herein,

It Is Ordered, Adjudged and Decreed that a Temporary Trustee should be appointed for said Debtor and its property, and

It Is Further Ordered that the parties hereto forthwith

proceed before the Honorable Philip L. Sullivan, one of the Judges of this Court to whom this case is regularly assigned, and take up with him the question as to whom shall be appointed Temporary Trustee.

JOHN P. BARNES

ered Jan. 1, 1936.

50 And afterwards, to wit, on the 14th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit:

51 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Tuesday, January 14, 1936.

Present: Honorable Philip L. Sullivan, Judge of said Court.

On motion of solicitor for the debtor corporation

It Is Ordered that Arthur P. Murphy, 3255 W. Madison Street, Chicago, Illinois, be and he is hereby appointed Temporary Trustee for the property described in the Debtor's petition upon filing a bond herein in the penal sum of Four Thousand ($4,000.00) Dollars.

d Jan. 1936.

52 And afterwards, to wit, on the 15th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

53 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER APPOINTING TEMPORARY TRUSTEE UNDER SECTION 77-B OF THE BANKRUPTCY ACT.

At Chicago, for the Northern District of Illinois, before His Honor Judge John P. Barnes, this 15th day of January, A. D. 1936.

This cause coming on to be heard upon the motion of Debtor

for the approval of its petition as having been properly filed under Section 77-B of the Bankruptcy Act, and for the appointment of Temporary Trustee, pursuant to said Section 77-B of the Bankruptcy Act, due and proper notice having been first given to all parties entitled thereto, and the Court having jurisdiction of the parties and the subject matter herein, and being duly apprised in the matter, and the Court having heretofore, on to-wit: the 14 day of January, A. D.
54 1936, appointed A. P. Murphy as Temporary Trustee herein, and having heretofore approved and confirmed the petition of Debtor as having been properly filed and in good faith;

The Court Does Hereby Further Order, Adjudge and Decree:

1. That all persons, firms and corporations yield up and deliver to said Trustee the possession of said premises.

2. That the Temporary Trustee be and he is hereby required to give notice to creditors and stockholders of said Debtor, of a hearing before this Court, to be held on February 11th, 1936, at ten o'clock in the forenoon, in the Federal Building, Chicago, Illinois, before His Honor Judge Philip L. Sullivan, in the Courtroom usually occupied by him, at which hearing, or any adjournment thereof, the Court may make this Order, appointing said Trustee, permanent, may appoint another Trustee or Trustees, or appoint the Debtor to continue in possession of said Debtor's property, or make and enter such further and other Order or Orders, amplifying, extending, limiting or otherwise modifying this Order, as it may seem proper, and such notice to be given by mailing, postage, prepaid, a notice to each creditor and stockholder known to him at his post office address, as it appears on the books of the Debtor, on or before the 3 day of February, A. D. 1936, and by publishing once a week, for two successive weeks, a copy thereof, in a newspaper of general circulation in the City of Chicago, County of Cook and State of Illinois, the last publication thereof to be at least three days before the 11th day of February, A. D. 1936. Such notice may be in or substantially the following form:

55 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.	In proceedings for Reorganization of said corporation under Section 77A and 77B, of the Bankruptcy Act of 1898, as amended and supplemented. No. 60278.

NOTICE.

To all creditors and stockholders of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, under Sections 77A and 77B of the Bankruptcy Act, has been filed in the District Court of the United States, for the Northern District of Illinois, Eastern Division, and that by an Order of said Court entered on the 14th day of January, A. D. 1936, said petition was approved as properly filed, and A. P. Murphy was appointed Temporary Trustee of the Debtor's Estate.

You are further notified, in accordance with said Order, that a hearing will be held on February 11th, 1936, at ten o'clock, before His Honor, Judge Phillip L. Sullivan, in the Courtroom in the United States Court House in Chicago, Illinois, usually occupied by him, or in his absence, before any Judge in said Court who may be hearing this matter, at which hearing, or any adjournment thereof, the Court will determine whether or not it will make the Order appointing A. P. Murphy, as Trustee, permanent, or will terminate such appointment and restore the Debtor to possession, or shall appoint an additional Trustee or Trustee, and will enter such order or orders as may seem pertinent.

Creditors and stockholders may attend this meeting, and all meetings, but are not required to do so.

A. P. MURPHY
Temporary Trustee of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

4. That said temporary trustee file, within fifteen (15) days from the date hereof, schedules of the property of said Debtor, in amount and kind thereof, and the location thereof, the value in money of the said property, and a list of the creditors of the said Debtor, showing their residences,
56 if known, and if unknown, that fact to be stated, the amount due each of them, the consideration therefor, and the security held by them, if any.

5. That this Court take full jurisdiction over the Debtor and all of the affairs of the said Debtor, with full reservation to enter any and all orders necessary for the proper preservation and administration of the Estate.

6. That under the further Order of this Court, all creditors, bondholders, stockholders, note holders and trustees and other persons claiming or acting by, through or under them, and other officers, agents, attorneys, representatives, servants and employees, are hereby enjoined and restrained from instituting or prosecuting any action at Law, or suit or proceeding in equity against the Debtor in any Court of Law or Equity.

7. The Court hereby determines that sixty (60) days from the date of the entry of this Order is a reasonable time within which claims and interests of creditors and stockholders may be filed; that all such claims and interests shall be filed with the Honorable Charles A. McDonald, Master, in writing, either by delivering the same to him in person, or mailing same to his office, located at 125 S. La Salle St., Chicago, Illinois; and the Trustee is hereby directed to forthwith send notices to all of the creditors, stockholders and other claimants of the Debtor, stating such fact, and it is hereby ordered and notice of the Trustee shall so state, that no claim or interest may thereafter participate, excepting on Order for cause shown, and such claims, when filed, shall be verified and itemized, and shall set out the amount and details of the claim.

8. That the Debtor shall prepare and submit a Plan of Reorganization of its Estate, and shall file same within thirty (30) days from the date hereof, and for the purpose of the Plan and its acceptance, shall divide its creditors and
57 stockholders into classes, according to their respective claims and interests, and may, for the purpose of such classification, recommend to the Court that portions of secured claims shall be classified as unsecured claims.

9. That the Debtor shall, when Plan is submitted to the

Court, as soon thereafter as possible, set forth what creditors or classes thereof are unaffected by said Plan, and send notices to the parties in interest at least ten (10) days before the hearing to be held to determine the issues raised, said hearing to be held at least thirty (30) days before the date set for final confirmation.

10. That the Court hereby orders that ninety (90) days is a reasonable time for the acceptance of the Plan, and that Debtor shall, at the time it proposes to file its written consents to said Plan, give notice at least ten (10) days before the date set for hearing on the confirmation of said Plan. If the Debtor has not secured the consents necessary, as provided by the provisions of this Act, before said time, application may be made to the Court for an extension, which, upon proper showing of the difficulties involved and the diligence of the Debtor, may be granted for a reasonable period.

11. If a Plan of Reorganization is not proposed or accepted within such time as fixed by Order of this Court, these proceedings shall be ordered dismissed or the Court may then set this cause for a hearing on the question of insolvency, and in a case of insolvency determine whether it shall direct the liquidation of this Estate. This Court reserves jurisdiction to make appropriate Orders consistent with the provisions of Section 77-B, for the protection of obligations incurred by Debtor while acting under this Order, and for the payment of administrative expenses and allowances in the proceedings herein, and for the protection of the depositary named herein in the payment of checks drawn upon it pursuant to this order.

58

12. That the Trustee may pay out of the funds of the Estate all moneys necessary to carry out the provisions of this Order, including all necessary costs that may be incurred by the Debtor in carrying out the provisions of this Order.

13. That the Trustees, under the Trust Indentures given to secure the First and Second Mortgage against the Estate of the Debtor, are authorized to file claims in this cause, in the manner as herein provided, not only in behalf of said Trustees individually but also on behalf of all of the holders of bonds and interest coupons pertaining thereto, issued and outstanding under said Trust Indentures. Every claim in respect to any bond, note or interest coupons, hereinafter filed in this cause by the owner or holder thereof, or by his authorized agent, shall, when such claim is approved and

allowed, reduce pro tanto any claim filed herein by said Trustees under said Trust Indentures.

14. It shall not be necessary, for the purpose of proving any claim filed by said Trustees, under said Trust Indentures, to produce the bonds, notes or interest coupons to which such claims relate, but proof of the amount of bonds, notes and interest coupons, outstanding under such Trust Indentures and remaining unpaid, may be made by other competent evidence.

Enter:

BARNES
Judge.

Dated at Chicago, Illinois, this 15th day of January, A. D. 1936.

59 And on, to wit, the 4th day of February, 1936 came the Chicago Title & Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit: Filed Feb. 1936.

60 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

NOTICE.

To: Karlin & Cohen, 11 S. LaSalle St.
Joseph Z. Willner, 751, 10 S. LaSalle St.

Please Take Notice that the Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, feeling aggrieved by the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession

of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, does hereby appeal from said orders to the United States Circuit Court of Appeals for the Seventh Circuit, for the reason stated in the assignment of errors accompanying this notice, and desiring to stay further proceedings herein, offers securities in the sum that said court may fix, and will pray, upon the approval thereof, that further proceedings be stayed pending the appeal.

You Are Further Notified that on Tuesday, the 4th day of February, 1936, we shall appear before his honor, Judge John P. Barnes, in the room usually occupied by him as a court room, in the Federal Building, Chicago, Illinois, and in his absence before any judge who may be sitting in his place and stead, and then and there present a petition for the allow-
61 ance of appeal and a stay of further proceedings, a copy of which petition is herewith served upon you; at which time and place you may appear if you see fit so to do.

WINSTON, STRAWN & SHAW
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

Received a copy of the above and foregoing notice, together with a copy of the assignment of errors and petition therein referred to, this 3rd day of February, 1936.

KARLIN & COHEN
JOSEPH Z. WILLNER

62 And on, to wit, the 4th day of February, 1936 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

63 IN THE DISTRICT COURT OF THE UNITED STATES Filed Feb. 1936.
* * (Caption—60278) * *

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States District Court, for the Northern District of Illinois, Eastern Division:

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the recorder of deeds of Cook County, Illinois, as document number 10325493, conceiving itself aggrieved by the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to
64 yield up and deliver to said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, does hereby appeal from such orders, and each of them, to the Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herein, and prays that this appeal may be allowed; that a citation be issued, directed to said Forty-one Thirty-six Building Corporation, commanding it to appear before the Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of record, proceedings and documents upon which said orders, and each of them, were made, be duly authenticated and sent to the Circuit Court of Appeals for the Seventh Circuit.

And the petitioner prays that the proper order touching the security to be required of it to perfect its appeal be made,

and the proper order touching the security be required of it to stay further proceedings herein be made, and prays that with the allowance of said appeal a supersedeas be issued by this honorable court.

CHICAGO TITLE AND TRUST COMPANY,
a corporation, as successor trustee,
By WINSTON, STRAWN & SHAW
Its Attorneys.

WINSTON, STRAWN & SHAW
Dated: Chicago, February 4th, 1936.

Feb. 4, 6. 65 And on, to wit, the 4th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

66 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ASSIGNMENT OF ERRORS.

Now comes Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the recorder of deeds of Cook County, Illinois, as document number 10325493, and files the following assignment of errors upon which it will rely upon its appeal from the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession

67 of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Building Corpo-

ration in any court of law or equity, and says that this honorable court erred in the following respects:

1. In deciding that Forty-one Thirty-six Wilcox Building Corporation had juridical existence for the purpose of invoking the jurisdiction of this honorable court.

2. In deciding that Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the master's certificate of sale issued pursuant to the decree entered in case number B-207163, in the Circuit Court of Cook County, Illinois, or redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring the ownership of said certificate of sale or any interest in said premises by reason of such ownership of said certificate of sale.

3. In deciding that Forty-one Thirty-six Wilcox Building Corporation had, at the date of the filing of the petition herein, a property interest in the premises involved herein, and that such property interest was sufficient to warrant this honorable court in assuming jurisdiction over said premises.

4. In deciding that the recognition of the juridical existence of Forty-one Thirty-six Wilcox Building Corporation was not a denial of full faith and credit by this honorable court to the public acts and to the judicial records and proceedings of the courts of the state of Illinois.

68 5. In deciding that sections 74A and 74B of the Bankruptcy Act as amended are retroactive.

6. In deciding that the appointment of a temporary trustee for the premises involved herein, the possession of said premises by such temporary trustee, and the restraining of the foreclosure proceedings brought by the Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, do not constitute the taking of property of Chicago Title and Trust Company, as such successor trustee, without due process of law, contrary to the Federal Constitution and amendments thereto, and the Constitution of the State of Illinois.

7. In deciding that sections 74A and 74B of the Bankruptcy Act as amended, as construed by this honorable court, is not an unwarranted invasion of the rights reserved to the state of Illinois, contrary to Article X of the Amendments to the Federal Constitution.

8. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was properly filed.

9. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was filed in good faith.

10. In refusing to permit the Chicago Title and Trust Company, as such successor trustee, to question the good faith of Forty-one Thirty-six Wilcox Building Corporation in filing its petition herein.

11. In deciding that Chicago Title and Trust Company, a corporation, as such successor trustee, is not a creditor within the meaning of the Bankruptcy Act as amended.

Wherefore, in order that the foregoing assignment of
69 errors may be and appear of record in this cause, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, presents the same to this honorable court, and prays that such disposition may be made thereof as is in accordance with the law and statutes of the United States in such case made and provided, and Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, prays that said order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and each of them, be reversed, and that an order may be made and entered herein dismiss-
70 ing the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935.

CHICAGO TITLE AND TRUST COMPANY,
a corporation, as successor trustee.
By WINSTON, STRAWN & SHAW
Its Attorneys.

WINSTON, STRAWN & SHAW
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

71 And afterwards, to wit, on the 4th day of February, 1936, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit: Entered 1936.

72 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER ALLOWING APPEAL.

The petition of Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, from certain orders heretofore entered by this court, being now presented,

It Is Hereby Ordered that an appeal be allowed to the United States Circuit Court of Appeals for the Seventh Circuit, as prayed for, and that a certified copy of the transcript of the proceedings be transmitted, duly authenticated to said United States Circuit Court of Appeals for the Seventh Circuit in the manner provided by law.

It Is Further Ordered that a citation be issued admonishing said Forty-one Thirty-six Wilcox Building Corporation to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit on or before the 2nd day of March, 1936.

It Is Further Ordered that a bond for costs and damages be given by said Chicago Title and Trust Company,
73 a corporation, as successor trustee, on said appeal, and that the same be, and is hereby, fixed at the sum of $5,000.00, conditioned as provided by law.

It Is Further Ordered that on the filing of said bond that all further proceedings in this court be stayed until the further order of this court, and pending decision on appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

Enter:

BARNES
United States District Court Judge.

Dated: Chicago, February 4th, 1936.

b. 6, 74 And on, to wit, the 6th day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

75 Standard

Accident Insurance Company

Detroit, Michigan

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

BOND ON APPEAL.

Know All Men By These Presents, that we, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, as Principal, and Standard Accident Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, as Surety, are held and firmly bound unto the above named Forty-One Thirty-Six Wilcox Building Corporation, a corporation, in the sum of Five Thousand and No/100 Dollars ($5,000.00), for the payment of which well and truly to be made, we bind ourselves, our administrators, successors and assigns, jointly and severally and firmly by these presents.

Sealed with our seals and dated this 5th day of February, A. D. 1936.

Whereas, an order was entered in the above entitled proceedings in the District Court of the United States, for the Northern District of Illinois, Eastern Division, on the 4th day of February, 1936, allowing an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy tem-

porary trustee, and the order made and entered on the
76 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity and each of said orders, wherein Forty-one Thirty-six Wilcox Building Corporation was petitioner and Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, was respondent;

Whereas, the said Arthur P. Murphy, Temporary Trustee, will remain in possession of said premises during the pendency of said appeal;

Whereas, in said order allowing said appeal it was required that appellant give a bond on appeal in the sum of Five Thousand Dollars ($5,000.00), and that on the filing of said bond all further proceedings in said court be stayed until the further order of said court, and pending decision on appeal to said United States Circuit Court of Appeals for the Seventh Circuit;

Now, Therefore, the condition of this obligation is such that if the above named Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as Document number 10325493, shall prosecute its appeal with effect and answer all damages and costs, if it fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor trustee, aforesaid
By (signed) E. C. HACKETT,
Its Vice-President.

(Chicago Title & Trust Company corporate seal)

OK
ABJ
OJS

STANDARD ACCIDENT INSURANCE COMPANY
By (signed) M. J. SCHEEMEACKER

(Standard Accident Insurance Co. Seal—May 29, 1884).

(Power of Attorney not copied).

red Feb. 6, 36. 77 And afterwards, to wit, on the 6th day of February, 1936, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

78 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER.

This cause having come on to be heard on the motion of Winston, Strawn & Shaw, attorneys for respondent, Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, for the approval of its bond heretofore ordered to be filed herein, on its appeal allowed to the United States Circuit Court of Appeals, for the Seventh Circuit, and said bond having been presented to the court,

It Is Ordered, Adjudged and Decreed that said bond be, and the same is hereby, approved and ordered filed.

Enter:

BARNES,
United States District Judge.

Dated Chicago, February 6th, 1936.

b. 19; 79 And on, to wit, the 19th day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain PRAECIPE FOR RECORD in words and figures following, to wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

To the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division:

Sir:

You will please prepare a transcript of the record to be transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit, in pursuance to the appeal heretofore taken in this case, and include therein the following:

1. Petition for corporate reorganization filed June 13, 1935.

2. Notice and petition of Forty-one Thirty-six Wilcox Building Corporation filed June 21, 1935.

3. Order entered June 21, 1935, giving leave to all parties to answer, and referring petition and answers thereto to Charles A. McDonald, as special master.

4. Answer of Chicago Title and Trust Company, as successor trustee, filed June 27, 1935.

5. Report of Charles A. McDonald, as special master, filed December 17, 1935.

6. Order of January 7, 1936, giving leave to Chicago Title and Trust Company to file exceptions to the report of Charles A. McDonald, special master, and setting a hearing on said report and exceptions.

81 7. Exceptions of Chicago Title and Trust Company, as successor trustee, to the report of Charles A. McDonald, special master.

8. Order of January 13, 1936, giving leave to Joseph Z. Willner to file appearance as joint counsel with Karlin & Kohen.

9. Order of January 14, 1936, approving and confirming the report of Charles A. McDonald, as special master and overruling the exceptions of Chicago Title and Trust Company, as successor trustee, thereto, approving the petition of Forty-one Thirty-six Wilcox Building Corporation as properly filed and filed in good faith, and ordering that a temporary trustee for the premises involved be appointed.

10. Order of January 14, 1936, appointing Arthur P. Murphy temporary trustee.

11. Order of January 15, 1936, directing all persons, firms and corporations, to yield up and deliver to Arthur P. Murphy, temporary trustee, possession of the premises involved, and enjoining and restraining all persons from instituting or prosecuting any actions at law or proceedings or suits in equity against the Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity.

12. Notice and petition of Chicago Title and Trust Company, as successor trustee, for the allowance of appeal, filed February 4, 1936.

13. Assignment of Errors filed February 4, 1936.

14. Order of February 4, 1936, allowing appeal to the Chicago Title and Trust Company, as successor trustee.

15. The appeal bond filed February 6, 1936.

16. Order of February 6, 1936, approving appeal bond.

17. Statement of evidence taken before Charles A. McDonald, as special master and the approval thereof by the judge.

18. Notice of the lodgment of the statement of evidence with the clerk of the District Court and motion for approval.
19. This praecipe for record containing stipulation of counsel.

WINSTON, STRAWN & SHAW,
Attorneys for Appellant Chicago Title and Trust Company, as Successor Trustee.

82 The foregoing praecipe for the transcript of record on appeal is hereby approved by Appellee, Forty-one Thirty-six Wilcox Building Corporation.

JOSEPH Z. WILLNER,
JOSEPH KARLIN,
Attorneys for Appellee, Forty-one Thirty-six Wilcox Building Corporation.

d Feb. 21, 936.

83 And on, to wit, the 21st day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain ADDITIONAL PRAECIPE in words and figures following, to wit:

84 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

To the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division,—Sir:

You will please include in the transcript of record to be transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit, in pursuance of the appeal heretofore taken in this case, in addition to the records heretofore directed to be prepared by you, the following:

1. Citation filed February 4, 1936.
2. Certificate of Clerk to the transcript of the record.
3. This additional Praecipe.

WINSTON, STRAWN & SHAW,
Attorneys for Appellant, Chicago Title and Trust Company, a Corporation, as Successor Trustee.
JOSEPH Z. WILLNER,
KARLIN & COHEN,
Attorneys for Appellee, Forty-one Thirty-six Wilcox Building Corporation, a Corporation.

Chicago, February ——, 1936.

85 Northern District of Illinois, } ss.
Eastern Division.

I, Henry W. Freeman, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled In the matter of Forty-one Thirty-six Wilcox Building Corporation, a corporation, No. 60278, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 2nd day of March, A. D. 1936.

HENRY W. FREEMAN,
Clerk.

(Seal)

IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—60278) * * *

United States of America, } ss.

The President of the United States To: Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

You Are Hereby Cited and Admonished to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at the Federal Building, in the city of Chicago, and state of Illinois, on or before March 2, 1936, pursuant to an appeal filed in the Clerk's office of the United States District Court, for the Northern District of Illinois, Eastern Division, wherein Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, is appellant, and you are appellee, to show cause, if any there be, why the orders, and each of them, in said appeal mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness, John P. Barnes, Judge of the District Court of

the United States, for the Northern District of Illinois, Eastern Division, this 4th day of February, A. D. 1936.

JOHN P. BARNES,
United States District Judge for the Northern District of Illinois, Eastern Division.

Service of the above, and receipt of a copy thereof, is hereby admitted, this 4 day of February, 1936.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for Forty-one Thirty-six Wilcox Building Corporation.

Endorsed: In the District Court of the United States * * (Caption—60278) * * Citation Filed Feb—4 1936 Henry W. Freeman Clerk. Winston, Strawn & Shaw Attorneys at Law Telephone Cen. 4363 First National Bank Building Chicago.

1 Feb. 13, '36. And afterwards, to wit: On the thirteenth day of February, 1936, the following Assignment of Errors was filed in the Office of the Clerk of the U. S. Circuit Court of Appeals:—

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

5765.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation a corporation, Debtor.	Proceedings for Corporate Reorganization. In the District Court of the United States for the Northern District of Illinois, Eastern Division. No. 60278.

ASSIGNMENT OF ERRORS.

Now comes Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the Recorder of Deeds of Cook County, Illinois,

as Document No. 10325493, and files the following assignment of errors upon which it will rely upon the allowance of its appeal from the order made and entered by said District Court on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered by said District Court on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered by said District Court on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and says that said District Court erred in the following respects:

1. In deciding that Forty-one Thirty-six Wilcox Building Corporation had juridical existence for the purpose of invoking the jurisdiction of said District Court.

2. In deciding that Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the master's certificate of sale issued pursuant to the decree entered in case No. B-207163, in the Circuit Court of Cook County, Illinois, on redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring the ownership of said certificate of sale or any interest in said premises by reason of such ownership of said certificate of sale.

3. In deciding that Forty-one Thirty-six Wilcox Building Corporation had, at the date of the filing of the petition herein, a property interest in the premises involved herein, and that such property interest was sufficient to warrant said District Court in assuming jurisdiction over said premises.

4. In deciding that its assumption of jurisdiction over the Forty-one Thirty-six Wilcox Building Corporation and of the premises involved was not a denial of full faith and

credit by said District Court to the public acts, records and judicial proceedings of the state of Illinois.

5. In deciding that sections 74A and 74B of the Bankruptcy Act, as amended, are retroactive.

6. In deciding that the appointment of a temporary trustee for the premises involved herein, the possession of said premises by such temporary trustee, and the restraining of the foreclosure proceedings brought by the Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, do not constitute the taking of property of Chicago Title and Trust Company, as such successor trustee, without due process of law, contrary to the Federal Constitution and amendments thereto, and the Constitution of the State of Illinois.

7. In deciding that sections 74 A and 74 B of the Bankruptcy Act as amended, as construed by this honorable court, is not an unwarranted invasion of the rights reserved to the state of Illinois, contrary to Article X of the Amendments to the Federal Constitution.

8. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was properly filed.

9. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was filed in good faith.

10. In refusing to permit the Chicago Title and Trust Company, as such successor trustee, to question the good faith of Forty-one Thirty-six Wilcox Building Corporation in filing its petition herein.

11. In deciding that Chicago Title and Trust Company, a corporation, as such successor trustee, is not a creditor within the meaning of the Bankruptcy Act as amended.

Wherefore, in order that the foregoing assignment of errors may be and appear of record in this cause, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, presents the same, and prays that such disposition may be made thereof as is in accordance with the law and statutes of the United States in such case made and provided, and Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, prays that said order made and entered on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said re-

port filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and said order made and entered on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and said order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and each of them, be reversed, and that an order may be made and entered dismissing the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor trustee,
By WINSTON, STRAWN & SHAW,
Its attorneys.

WINSTON, STRAWN & SHAW,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

And afterwards, to wit: On the eleventh day of March, 1936, the following further proceedings were had and entered of record, to wit:—

red Mar. 11, 36.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Wednesday, March 11, 1936.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.

(Caption No. 5765.)

It is ordered by the Court that the petition of Chicago Title and Trust Company, as Successor Trustee under the Trust Deed recorded as Document No. 10325493, for leave to appeal from the Orders or Decrees of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on January 14, 1936 and on January 15, 1936 be, and the same is hereby granted, and an appeal from said Orders or Decrees is hereby allowed.

It is further ordered that appellant file an appeal bond in the sum of two hundred fifty ($250.00) dollars within ten days from this date.

It is further ordered that this appeal be, and the same is hereby consolidated with the appeal allowed by the District Court and docketed in this Court as No. 5800.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 102, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the thirty-first day of March, 1936, upon which the following entitled consolidated cause was heard and determined:

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title & Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation,
Appellee,

Nos. 5765-5800, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 11th day of March, A. D. 1937.

FREDERICK G. CAMPBELL,
(SEAL) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the first day of October, 1935, of the October Term, in the year of our Lord one thousand nine hundred and thirty-five, and of our Independence the one hundred and sixtieth.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under the Trust Deed recorded as Document No. 10325493,

Appellant,

5765-5800 *vs.*

Forty - One Thirty - Six Wilcox Building Corporation.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And to-wit: On the thirteenth day of February, 1936, there was filed in the office of the Clerk of this court a Petition for Leave to Appeal, and Brief in Support in cause No. 5765, which said Petition for Leave to Appeal and Brief are not copied here.

And afterwards, to-wit: On the twenty-seventh day of April, 1936, there was filed in the office of the Clerk of this court, an Appellants Brief in Consolidated Causes Nos. 5765-5800, which said Brief for Appellant is not copied here.

And afterwards, to-wit: On the eighth day of June, 1936, there was filed in the office of the Clerk of this court, an Appellees Brief in Consolidated Causes Nos. 5765-5800, which said Appellees Brief is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the sixth day of October, 1936, of the October Term, in the year of our Lord one thousand nine hundred and thirty-six, and of our Independence the one hundred and sixty-first.

And afterwards, to-wit: On the twenty-first day of October, 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 21, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee, *et al.*,
5765-5800 *vs.*
Forty-One Thirty-Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. George W. Ott, counsel for appellant, and by Mr. Joseph Karlin and Mr. Joseph Z. Willmer, counsel for appellee, and the court having heard the same, takes this matter under advisement.

And afterwards, to-wit: On the thirtieth day of November, 1936, there was filed in the office of the Clerk of this court, the Opinion of the court, which said Opinion is in words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765, 5800. October Term and Session, 1936.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

Debtor.

Chicago Title and Trust Company, a Corporation, as Successor Trustee under the Trust Deed recorded as Document No. 10325493,

Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

Appellee.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

November 30, 1936.

Before SPARKS, *Circuit Judge*, and LINDLEY and BRIGGLE, *District Judges.*

LINDLEY, *District Judge.* Appellee, a building corporation, on June 13, 1935, filed its petition for corporate reorganization under Sections 77A and 77B of the Bankruptcy Act, as amended, and its petition praying that the receiver in a foreclosure proceedings in the state court be directed

to deliver possession of all property in the receiver's possession to the United States District Court. Appellant, as successor trustee and plaintiff in the foreclosure proceedings, was permitted by the District Court to file its answer to the petition, which, with the answer, was referred to a Master, who found and concluded that appellee was a corporation within that word as used in the bankruptcy act; that its property had been sold by decree of the Circuit Court of Cook County on July 19, 1931 but that the certificate of sale had been purchased and is now the property of appellee; that appellant is not a creditor within the class permitted by the Bankruptcy Act to question good faith; that appellee's petition for reorganization was properly filed in good faith; that the court's jurisdiction being paramount, the proceedings in the state court should be stayed until the further order of the court. Appellant's exceptions were overruled. The court approved the petition as being properly filed in good faith, appointed a temporary trustee, directed all parties to deliver possession of the property to the trustee and restrained appellant from further prosecuting is foreclosure proceedings, pending reorganization. From this order this appeal was taken.

Appellee was organized under the laws of the state of Illinois on April 10, 1929, to acquire and operate the premises, which were thereupon conveyed to the corporation by the then owner, one Gurevitz, subject to the mortgage of $95,000, made to the Madison & Kedzie State Bank as trustee, (which, present appellant has succeeded as successor trustee). On December 26, 1929 appellee executed a second mortgage, securing $15,000, to appellant as trustee. On May 4, 1931, upon a proceedings instituted by the state prior thereto, the Circuit Court of Cook County entered a decree, forfeiting the charter of appellee for failure to file annual reports and to pay license fees and franchise taxes, and decreed its dissolution, but took no steps to distribute its property.

On July 10, 1931, a decree was entered by the Circuit Court of Cook County against appellee, foreclosing two mechanic liens, and the premises were sold, in satisfaction of the decree, to the lienholders, the certificate of sale having been issued to them August 5, 1931. Thereafter on May 7, 1935, the then holders of the certificates assigned the same to one Willens, who, on May 4, 1935, assigned them to appellee.

On October 24, 1931, the trustee under the first mortgage

filed foreclosure proceedings in the Superior Court of Cook County. A receiver was appointed. On November 10, 1931, suit was brought to foreclose the lien of the junior mortgage, and the receivership created under the first mortgage foreclosure was extended to include the second. Appellee was party to each of these suits.

Appellant contends that, by virtue of the forfeiture of its charter as aforesaid, appellee lost its legal existence and was thereafter without right to institute action seeking reorganization under the Bankruptcy Act. Sections 14-79 Chapter 32 of the 1929 Corporation Act of the State of Illinois, provide for forfeiture of a corporate charter for failure to make annual reports. The Act provides two years of grace for liquidation of the affairs of the corporation, in actions instituted either by itself of by its creditors. This two year period had expired when the petition for reorganization was filed. Appellant admits paramount jurisdiction in the court of bankruptcy in liquidation or reorganization of insolvent estates, in any manner provided by the federal bankruptcy act, but argues that after the two year period of grace, provided by the Illinois Statute, a corporation has no legal existence and, being without life, cannot thereafter invoke federal jurisdiction, and that to permit such action to be maintained would be unconstitutional as failing to give full faith and credit to the decree of forfeiture. It admits that, within that period, creditors may invoke the federal jurisdiction, thus superseding all other proceedings in state or federal courts having to do with the liquidation of debtor's assets, but insists that after the two year period has expired, a corporation may not inaugurate such proceedings by a voluntary petition.

In the case of *In re 211 East Delaware Place Building Corporation*, 76 Fed. (2d) 834, this Court had to do with a situation where the receiver in the state court, under pending foreclosure proceedings, objected to the jurisdiction of the federal court to approve a petition under 77B, by a building corporation which had been dissolved by decree of the state court because of noncompliance with the state corporation laws, entered more than two months prior to the filing of the bankruptcy proceedings. We then said:

> "It by no means follows that the bondholders could not treat the corporation as an entity subject to adjudication under the Bankruptcy Act or under sections 77A and 77B of said act. That a corporation, thus dissolved,

> exists for certain purposes, Smith-Hurd Rev. St. Ill. 1931, c. 32, sec. 14, 79, Cahill's Rev. St. Ill. 1931, c. 32, pars. 14, 79, one of which is to have its estate administered in a court of bankruptcy is the holding of the courts that have passed on this question."

Proceeding, the Court remarked that there was no reason why the rule which applies under the general bankruptcy act, should not apply under sections 77A and 77B, saying:

> "It seems, there are stronger reasons for extending to such unfortunate bondholders all the protection which may fairly and legitimately be extended to creditors under sections 77A and 77B."

True it is that in that case the proceedings had been instituted by three creditors. But, as appears in *In re 211 East Delaware Place Building Corporation,* 14 F. Supp. 96, where Judge Evans sat in the District Court, "the debtor, together with all of the stockholders joining, filed an answer admitting the allegations of the complaint and setting forth facts which disclosed acts of bankruptcy other than the one set forth in the petition. It admitted insolvency and inability to pay its debts—facts, with proof of which the record is most replete". It was there held that in view of this fact the proceedings were, to all intent and purposes, voluntary in character. Consequently it is the settled law of this court that the corporation, thus dissolved, exists for the purpose of having "its estate administered in a court of bankruptcy" in a proceedings "to all intents and purposes, voluntary in character."

The Circuit Court of Appeals for the Second Circuit, in the case of *In re Munger Vehicle Tire Co.,* 159 Fed. 901, held that a corporation, previously declared dissolved under the state law, had the legal right and power to appear by attorney in a bankruptcy action instituted by creditors. The basis for this decision and that of other courts to similar purport, is that Congress did not intend to leave the affairs of dissolved, unliquidated corporations to the state courts, but intended to include them within the meaning of the word corporations as used in the act.

Here the debtor was still a defendant in the state court proceedings. Those proceedings had to do with the liquidation of the only assets,—the building and the real estate on which it is located. There was nothing else to which creditors might have recourse, and any final liquidation of those assets, consequently, would effect a final disposition of all the

rights of all creditors, who would, thereafter, have no recourse upon their claims. Thus, in effect and for all practical purposes, the proceedings to which the debtor was a party, had to do with the liquidation of the assets of an insolvent corporation,—one which was unable to pay its debts as they matured.

Remembering that under the constitution, the national government, through its judiciary, pursuant to acts of Congress, has exclusive and paramount jurisdiction of the estates of insolvent persons, it follows that nothing done by a state court may curtail, limit, impede or defeat that jurisdiction. Jurisdiction in bankruptcy under the federal constitution comes into existence, we take it, simultaneously with the coming into existence of insolvency of the debtor. Over his acts, in marshalling and liquidating his assets, in disposing of his property, the bankruptcy power promptly extends its arms. Consequently, though a corporation may be a creature of a state, that state having created it and given it the right to exist and to make debts, charged with knowledge of this bankruptcy power, may not so frame its laws as to bring about a situation where the jurisdiction of the federal courts to administer an insolvent estate is defeated. Having given the corporation existence, it may not take away this life to defeat the working of the bankruptcy law. Until its estate has been administered, liquidated, composed or reorganized in compliance with the bankruptcy act, the jurisdiction of the bankruptcy court continues.

And to say that only creditors may invoke that jurisdiction, it seems to us, would cramp unnecessarily and unreasonably the jurisdiction of the federal courts over insolvent estate. We can conceive of no good reason why a debtor corporation, struggling with foreclosure of three classes of secured claims, still in existence for the purpose of liquidation of its assets in those proceedings, may not institute proceedings under the bankruptcy act, and, incidentally, perform such acts as are necessary to preserve its property rights for itself and its creditors, until that court's administration can be made effective. For this reason we believe that the debtor had a right to select its forum for the liquidation of its assets and to buy the certificates of sale under the first foreclosure in order to preserve its property rights for its creditors and to enable effective bankruptcy administration to be had.

Nor do we consider this, in any wise, an unconstitutional

exercise of the bankruptcy power. To be sure, the decree of the state court forfeiting the charter of the debtor was of final unimpeachable decree, subject, however, to a limitation, that is, the paramount authority under the federal constitution to liquidate the debts of the corporations so long as such debts and the assets exist. In other words, as we have pointed out, state court authority to annul an insolvent corporation's existence, is subject to the paramount authority on the part of the bankruptcy court to take such steps regarding the debtor and its affairs as will effectuate the bankruptcy power. Consequently, the District Court had the power to entertain the petition of the debtor and to restrain pending suits interfering with its administration and the accomplishment of the purposes of its jurisdiction.

Appellant complains of the finding that the petition was filed in good faith. The court overruled the exceptions to the findings and approved the master's report, and we can not see, upon examination of the record, that the facts did not exist justifying the action of the court.

Judge BRIGGLE dissents.

The orders are

AFFIRMED.

Endorsed: Filed November 30, 1936. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirtieth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Monday, November 30, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,

5765 *vs.*

Forty - One Thirty - Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the Order or Decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

And on the same day, to-wit: On the thirtieth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Monday, November 30, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
5800 *vs.*
Forty - One Thirty - Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the Order or Decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the nineteenth day of December, 1936, there was filed in the office of the Clerk of this court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

And afterwards, to-wit: On the seventh day of January, 1937, the following further proceedings were had and entered of record, to-wit:

Thursday, January 7, 1937.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee, etc.,
5765-5800 *vs.*
Forty - One Thirty - Six Wilcox Building Corporation.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that the Petition for a Rehearing is this cause be, and the same is hereby denied.

And afterwards, to-wit: On the twenty-fifth day of February, 1937, there was filed in the office of the Clerk of this court, a Notice and Praecipe for Supreme Court Record, which said Notice and Praecipe are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765-5800. October Term and Session, 1936.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as Document No. 10325493, *Appellant,*

vs.

Forty - One Thirty - Six Wilcox Building Corporation, a corporation, *Appellee.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

NOTICE.

To: Joseph Z. Willner, 751, 10 S. LaSalle St.,
Joseph J. Karlin, 833, 11 S. LaSalle St.

Please Take Notice that we have this day filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, a praecipe for record, a copy of which is herewith served upon you.

RICHARD H. HOLLEN,
GEORGE W. OTT,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee, etc.

Dated at Chicago, Illinois, February 24, 1937.

Received a copy of the above notice and praecipe therein referred to this 24th day of February, 1937.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for Forty-One Thirty-Six Wilcox Building Corporation, a corp.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765-5800. October Term and Session, 1936.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as Document No. 10325493, *Appellant,*

vs.

Forty-One Thirty-Six Wilcox Building Corporation, a corporation, *Appellee.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PRAECIPE FOR RECORD.

The Clerk of the United States Circuit Court of Appeals for the Seventh Circuit will please prepare and print the record to be filed with the Supreme Court of the United States with the petition for certiorari to review the order and judgment of said Circuit Court of Appeals entered November 30, 1936, in causes Nos. 5765 and 5800 on consolidated appeals from certain decrees or orders of the District Court of the United States for the Northern District of Illinois, Eastern Division.

The record to be prepared and printed shall include the following:

(1) The printed record now on file in the Circuit Court of Appeals.

(2) A recital of the filing of the petition of appellant for the allowance of an appeal and brief in support thereof.

(3) A recital of the filing of all briefs by appellant and appellee.

(4) Minute entry showing argument of cause.

(5) Opinion of the court.

(6) The order or judgment of the court.

(7) A recital of the filing of the petition of the appellant for rehearing.

(8) The order denying the petition of the appellant for rehearing.

(9) This praecipe for the record with proof of service thereof.

(10) Certificate of the clerk of the circuit court of appeals to the record.

Respectfully,

RICHARD H. HOLLEN,
GEORGE W. OTT,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee, etc.

Dated at Chicago, Illinois, February 24, 1937.

Endorsed: Filed February 25, 1937. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 105 to 118, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe filed on February 25, 1937 (excepting Item 1, of said praecipe, being the Printed Record, which is certified under a separate certificate)

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title & Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation,
Appellee,

Nos. 5765-5800, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 11th day of March, A. D. 1937.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937
No. 23

ORDER ALLOWING CERTIORARI—Filed May 17, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937
No. 24

ORDER ALLOWING CERTIORARI—Filed May 17, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S
FILED
APR 7 1937
CHARLES ELMORE CROPLEY
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. ~~865~~ [redacted] 23-24

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Debtor.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

SILAS H. STRAWN,
RICHARD H. HOLLEN,
GEORGE W. OTT,
CHARLES J. CALDERINI,
Counsel for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. _____

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Debtor.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Chicago Title and Trust Company, a corporation, as Successor Trustee, submits this petition for a writ of certiorari to review decrees of the United States Circuit Court of Appeals for the Seventh Circuit, entered November 30, 1936, affirming decrees of the United States District Court for the Northern District of Illinois, Eastern Division, and files herewith a certified copy of a complete transcript of the record in said cause; and its brief in support of this petition.

SUMMARY OF THE MATTER INVOLVED.

Two questions are presented by this petition:

1. Does the National Bankruptcy Act empower a corporation which has been dissolved by the authorities of the State of Illinois to file a *voluntary* petition for reorganization under Section 77B of that Act, more than four years after the entry of a judicial decree dissolving the corporation and more than two years after the expiration of the statutory period during which its corporate existence was continued solely for winding up its affairs?

2. Is a court of bankruptcy authorized to exercise jurisdiction under Section 77B, when, prior to the filing of the petition, (a) all property of the debtor corporation has been sold pursuant to judicial decree, the period provided by state law for redemption therefrom has expired, and the holder of the certificate of sale has become absolutely entitled to a deed, and (b), a purported assignment of the certificate of sale to the debtor is void under state law, because of the debtor's lack of corporate capacity to receive it?

STATEMENT.

On April 10, 1929, respondent, Forty-one Thirty-six Wilcox Building Corporation, was organized under the laws of the State of Illinois for the purpose of owning and operating one building (R. 39). Shortly thereafter, it acquired title to a parcel of real estate with the improvements thereon, in the City of Chicago, Illinois, subject to the lien of a first mortgage securing the payment of bonds aggregating $95,000 (R. 71). On December 26, 1929, respondent further encumbered the premises with a junior mortgage securing the payment of its notes for $15,000 (R. 71). These premises are the *only* property ever owned or possessed by respondent.

On May 22, 1931, in a suit brought by the State of Illinois, in the Superior Court of Cook County, Illinois, a decree (R. 51) was entered against respondent finding:

> "Said defendant and its Board of Directors have ceased to transact business as a corporation, have discontinued the exercise of corporate functions and have failed to comply with an Act entitled, 'An act in relation to corporations for pecuniary profit' in force July 1, 1919, and all subsequent amendments thereto, relative to the filing of annual reports and payment of license fees or franchise taxes."

and decreeing:

> "that the said defendant corporation, the Forty-one Thirty-six Wilcox Building Corporation, be, and the same is hereby dissolved, and that the charter and authority of said corporation be, and the same is hereby declared to be null and void and of no force and effect whatsoever * * *."

No appeal was taken from this decree, and no attempt has ever been made to have it set aside.

The Corporation Act of the State of Illinois then in force provided (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 32):

> Section 14: "All corporations organized under the laws of this State, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporations and selling and conveying the property and effects thereof. Such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity."
>
> Section 79: "The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporations, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution."

On July 10, 1931, a decree was entered by the Circuit Court of Cook County against respondent foreclosing cer-

tain mechanics liens on its premises, subject only to the lien of the first mortgage (R. 55). Pursuant to this decree the premises were sold on August 5, 1931, and a master's certificate of sale was issued to the purchasers entitling the holder thereof to a deed to the premises upon the expiration of the period of redemption (R. 63, 65). Neither respondent nor any of its creditors redeemed from this sale within the period prescribed by the statutes of the State of Illinois (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 77, Sec. 18, 20).

On October 24, 1931, petitioner's predecessor in interest, the Madison & Kedzie State Bank, as trustee under the first mortgage, instituted suit in the Superior Court of Cook County, Illinois, to foreclose the lien of its mortgage (R. 10). On November 10, 1931, the trustee under the junior mortgage also commenced suit in the Superior Court to foreclose the lien of its junior mortgage (R. 71). A receiver appointed in these suits immediately took possession of the premises (R. 71). Respondent was made a party to and appeared in both suits by its attorney; it offered no defense, but its attorney received and checked accounts and reports from time to time served upon parties of record by the receiver (R. 31, 73). After the receiver took possession of its property (October, 1931) respondent did not transact any business (R. 27, 28).

On August 5, 1932, the right of the corporation to redeem from the sale upon the foreclosure of mechanics liens expired (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 77, Sec. 18); and on November 5, 1932, the right of its creditors to redeem from that sale also expired (*Id.* Sec. 22).

On May 4, 1933, the two-year period during which respondent's corporate existence was continued for the purpose of winding up its affairs expired. At that time respondent had no property of any kind, except the bare possibility that the certificate of sale might become void if the

holder failed to take out a deed within five years of the expiration of the period of redemption (Smith-Hurd Ill. Rev. Stat. Chap. 77, Sec. 31)—a possibility which was, in any event, subject to the lien of the first mortgage and the suit then being prosecuted for the foreclosure thereof.

In May, 1935, one Willens conceived a plan for the reorganization of respondent under Section 77B of the Bankruptcy Act. Pursuant thereto, the three persons who now claim to be stockholders of the respondent acquired from the former owners all of its shares of stock. Stockholders' and directors' meetings were held for the purpose of authorizing the filing of the present petition for reorganization (R. 31, 34, 35). Willens then acquired and assigned to the respondent the certificate of sale issued on the foreclosure of the mechanics' liens (R. 35).

On June 13, 1936, respondent filed its petition for reorganization under Section 77B of the Bankruptcy Act (R. 2). Thereafter, it filed its petition praying that the receiver appointed in the foreclosure suits in the state court be directed to turn over to it the premises in his possession and that the complainants in those suits be restrained from the further prosecution thereof (R. 7).

These petitions and the answer thereto of this petitioner were referred to a special master, who reported that respondent had legal capacity to file a voluntary petition under Section 77B and that its petition was sufficient to confer upon the court jurisdiction over the respondent and the premises in question (R. 70). The District Court overruled petitioner's exceptions and confirmed the master's report, appointed a temporary trustee and required the state court receiver to deliver possession of the premises to the trustee, and restrained petitioner from further prosecution of its foreclosure proceedings (R. 79, 80, 83).

Upon appeal, the Circuit Court of Appeals for the Sev-

enth Circuit, in a decision by a divided court, affirmed these decrees (R. 107).

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

The reasons relied upon for the allowance of the writ herein are:

(1) The present decision is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *Vassar Foundry Co.* v. *Whiting Corporation,* 2 F. (2d) 240, where it was held that a Michigan corporation which was dissolved under a statute of that state could not file a voluntary petition in bankruptcy more than four months after its dissolution.

(2) The question, whether a corporation which has been dissolved under the laws of the state of its creation, is a "corporation" eligible to file a voluntary petition for corporate reorganization under Section 77B of the Bankruptcy Act, is an important question of federal law which has not been, but should be, settled by this court. Otherwise the law will remain uncertain in view of the principle expressed by this court in *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257, *Mumma* v. *Potomac Company,* 8 Pet. 281, and other cases, that upon dissolution, a corporation ceases to exist for any purpose whatsoever.

(3) The Circuit Court of Appeals has decided an important question of local law in a way in conflict with applicable local decisions, in that it recognizes the validity of a transfer of property (the certificate of sale referred to *supra*) to a dissolved corporation when by the laws of the State of Illinois that transfer was ineffective because of the non-existence of the transferee. If this transfer be disregarded, the important federal question is presented whether the bare possibility remaining in respondent after the expiration of the period of redemption,

that the holder of the certificate might not take out a deed within the statutory period of five years, is a property interest sufficient for administration and reorganization under Section 77B.

4. The questions presented are of public interest, in that:

(a) They involve the right of the State of Illinois to control the existence and duration of corporations which it creates.

(b) They also involve important principles upon which personal and property rights depend. If a dissolved corporation is continued indefinitely for the purpose of filing a petition under the Bankruptcy Act after its complete extinction under state law, and it can in the meantime acquire and convey property and exercise other corporate powers, a condition of uncertainty will arise as to titles to real and personal property in the State of Illinois and doubt will be cast upon every transaction concerning property in which the corporation might have had an interest.

WHEREFORE, petitioner prays that this petition for a writ of certiorari may be granted and that this court proceed as is provided by law and the rules of this court in such cases, and that upon final hearing, the decrees of the United States Circuit Court of Appeals for the Seventh Circuit be reversed.

Respectfully submitted,

SILAS H. STRAWN,
RICHARD H. HOLLEN,
GEORGE W. OTT,
CHARLES J. CALDERINI,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION.

I.

OPINIONS BELOW.

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals for the Seventh Circuit is printed in full in the record (R. 107) and is reported in 86 F. (2d) 667. The opinion was delivered by District Judge Lindley with whom Circuit Judge Sparks concurred. District Judge Briggle dissented.

II.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240-A of the Judicial Code, as Amended, by the Act of February 13, 1925 (28 U. S. C. A., sec. 347-A). The decrees sought to be reviewed (R. 113, 114) were entered after two appeals, one allowed by the District Court, the other by the Circuit Court of Appeals, had been consolidated (R. 102). The date on which the Petition for Rehearing was denied by order of the Circuit Court of Appeals was January 7, 1937 (R. 115).

III.

STATEMENT OF THE CASE.

The facts pertinent to the questions here presented are sufficiently recited in the Petition under the caption "Statement of Matter Involved."

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

(1) In holding that respondent was a corporation eligible to file a petition for reorganization under Section 77B of the Bankruptcy Act.

(2) In holding that respondent had a property interest sufficient to enable a bankruptcy court to exercise jurisdiction under Section 77B.

(3) In holding that the decree dissolving respondent, and the statutes of the State of Illinois limiting its corporate existence thereafter, were suspended and superseded by the Bankruptcy Act and the proceedings had thereunder.

(4) In holding that its construction of Section 77B of the Bankruptcy Act was not contrary to Article V or Article X of the Amendments to the Constitution of the United States.

(5) In affirming the decrees of the District Court.

V.

SUMMARY OF ARGUMENT.

I.

Two years after the entry of the decree of dissolution respondent ceased to exist as a legal entity. No action could thereafter be commenced by or against it, and it was incapable of performing any corporate acts. By the settled rule of this court it was not entitled to recognition by any federal court. It was not a "corporation" within Section 77B of the Bankruptcy Act because that term, as defined by the Act, contemplates an entity having corporate "powers and privileges." Furthermore, the object of Section 77B is to rehabilitate a debtor, and the provisions of the Section contemplate the continued existence of corporate power. The debtor in this case has alleged and proceeded on the theory that it is an existing corporation.

Recognition of the legal extinction of respondent does not defeat the jurisdiction of the federal courts under the bankruptcy power because no legal entity is before the court. On the contrary, the decision of the Court of Appeals, by ignoring the dissolution, in effect, extends the life of an Illinois corporation in defiance of the law of the state and contrary to the constitutional principle laid down by this court in *Hopkins Federal Savings & Loan Association* v. *Cleary,* 296 U. S. 315, 337.

II.

It is essential to the exercise of jurisdiction under Section 77B that the debtor be possessed of property which can be the subject of reorganization. Its property must be of a

kind and character that can pass to a trustee in bankruptcy that is, it must be capable of being "transferred", or "levied upon and sold under judicial process" within the meaning of Section 70 of the Act. Under state law the interest remaining in respondent after judicial sale and after the expiration of the period of redemption was not such an interest as could be "sold under judicial process". *Commerce Vault Co.* v. *Barrett*, 222 Ill. 169, 175. This interest could not be "transferred" after respondent's corporate existence ceased because it lacked capacity to execute a deed. Nor could respondent enlarge its title after dissolution by acquiring the outstanding certificate of sale, for, under the law of the State of Illinois, it was then incapable of accepting a conveyance or transfer.

By recognizing the validity of the transfer of the certificate of sale to respondent more than four years after its dissolution, the Court of Appeals, by judicial decision, creates property rights which are denied by the law of Illinois, contrary to the fifth and tenth amendments to the Constitution of the United States.

I.

A DISSOLVED CORPORATION HAS NO CAPACITY TO FILE A PETITION FOR CORPORATE REORGANIZATION UNDER SECTION 77B OF THE BANKRUPTCY ACT AFTER THE EXPIRATION OF THE PERIOD PROVIDED BY THE LAW OF ITS CREATION FOR THE WINDING UP OF ITS AFFAIRS.

Two years after the entry of the decree of dissolution, all corporate powers of respondent were extinguished by force of the Illinois statute, and it ceased to exist as a legal entity (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 32, Sec. 14, 79). No action could thereafter be commenced by

or against it, and it was incapable of performing any corporate acts.*

Dukes v. *Harrison & Reidy*, 270 Ill. App. 372, 382:

> "Section 53 of the Corporation Act must be construed with sections 14 and 79 of the same act, and it is apparent that complainant cannot avail herself of the remedy provided by this statute for the reason that her bill of complaint was not filed until September 14, 1931, which was more than two years after the dissolution of the corporation."

Consolidated Coal Company v. *Flynn Coal Co.* 274 Ill. App. 405, 411, adopts and applies the same construction.

A. J. Bates Co. v. *United States* (Ct. Cl.) 3 F. Supp. 245, 248:

> "The period of limitation within which suit by creditors could be instituted against the Illinois corporation, its officers or stockholders, for any liabilities incurred previous to its dissolution, expired on February 10, 1923. From and after that date the Illinois corporation was extinct for all purposes. It was as nonexistent as if it had never been created, had no stockholders or officers, and was incapable of transacting any business whatsoever."

Chas. A. Zahn Co. v. *United States* (Ct. Cl.) 6 F. Supp. 317, 319:

> "Two years after the dissolution of the corporation, or on March 30, 1923, the Charles A. Zahn Company ceased to exist, and became incapable of transacting

* The only case in Illinois which would seem to militate against this principle is *Singer & Talcott Co.* v. *Hutchinson*, 176 Ill. 48, where it was held that a writ of error might be sued out by a dissolved corporation after the expiration of the two-year period, to review a judgment in a suit commenced within the two years. The basis of the holding was that the Constitution and the Practice act of the State preserved to every party to an action the right to prosecute the writ of error. The Court said: "This corporation was kept alive for the purpose of being made such a party to the original action and, being so alive for such purpose, is preserved by the Practice act with authority to prosecute an appeal or a writ of error." (pp. 52, 53).

any business whatever in its corporate capacity. *A. J. Bates Co.* v. *United States* (Ct. Cl.) 3 F. Supp. 245. This suit filed more than six years thereafter, on May 10, 1929, cannot be maintained."

The same effect has been given to similar statutes of other states. (*Dundee Mortgage & Trust Investment Co.* v. *Hughes*, 77 Fed. 855; *Service & Wright Lumber Co.* v. *Sumpter Valley Ry. Co.*, 81 Ore. 32, 149 Pac. 531; *Thornton* v. *Marginal Freight Railway*, 123 Mass. 32; *Maine Shore-Line Co.* v. *Maine Cent. R. Co.*, 92 Me. 476, 43 Atl. 113; *Von Glahn* v. *DeRosset*, 81 N. C. 467; *State* v. *Circuit Court for Milwaukee County*, 184 Wis. 301, 199 N. W. 213; *Peck* v. *Linney*, 97 Wash. 103, 165 Pac. 1080).

By the settled rule of this court dissolution under a state statute completely terminates corporate existence. Thereafter, federal courts will not recognize the dissolved corporation as an entity capable of engaging in litigation or otherwise exercising corporate powers.

Mumma v. *The Potomac Co.*, 8 Pet. 281, 286:

"there is no pretence to say that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man."

(P. 287):

"A corporation, by the very terms and nature of its political existence, is subject to dissolution, by a surrender of its corporate franchises, and by a forfeiture of them for wilful misuser and nonuser. Every creditor must be presumed to understand the nature and incidents of such a body politic, and to contract with reference to them. And it would be a doctrine new in the law that the existence of a private contract of the corporation should force upon it a perpetuity of existence contrary to public policy and the nature and objects of its charter."

Oklahoma Gas Co. v. *Oklahoma*, 273 U. S. 257, 259:

"It is well settled that at common law and in the federal jurisdiction a corporation which has been dis-

> solved is as if it did not exist, and the result of the dissolution can not be distinguished from the death of a natural person in its effect. (Citing cases). It follows therefore that, as the death of the natural person abates all pending litigation to which such a person is a party, dissolution of a corporation at common law, abates all litigation in which the corporation is appearing either as plaintiff or defendant. To allow actions to continue would be to continue the existence of the corporation *pro hac vice*. But corporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation. The matter is really not procedural or controlled by the rules of the court in which the litigation pends. It concerns the fundamental law of the corporation enacted by the State which brought the corporation into being."

No reason is apparent why an exception should be made to this rule to permit a dissolved corporation to file a voluntary petition for reorganization under Section 77B of the Bankruptcy Act. (11 U. S. C. A. § 207, 48 Stat. at L. 912, as amended.)

This section authorizes "any corporation, which could become a bankrupt under Section 4 of this Act" to file an original petition. Section 4 extends the right of voluntary bankruptcy to "any person." (11 U. S. C. § 22.) "Person" is defined by Section 1(19) to include "corporations"; and by Section 1(6) the term "corporations" means "all bodies having any of the powers and privileges of private corporations." (11 U. S. C. § 1.) We submit that these definitions contemplate an existing corporation having "powers and privileges", and not one whose powers have been completely revoked. (R. 52.)

The very object of Section 77B is to prevent liquidation and to rehabilitate the debtor. This court stated in its

opinion filed January 4, 1937, in *City Bank Farmers Trust Co.* v. *Irving Trust Co.*, 81 L. ed. 241, 244:

> "The purpose of § 77B was to facilitate rehabilitation of embarrassed corporations by a scaling or rearrangement of their obligations and shareholders' interests, thus avoiding a winding up, a sale of assets, and a distribution of the proceeds."

All of the provisions of Section 77B contemplate that, pending reorganization, the debtor shall be capable of performing corporate functions. The court may authorize the debtor to continue temporarily in possession of its property, to borrow money and issue certificates therefor secured by its assets, to reject executory contracts, and to perform other acts of a similar nature; and other provisions require the debtor to exercise corporate powers.

All of the respondent's acts in this proceeding have been based upon the assumption of the continued existence of its corporate powers, *viz.*, the adoption of resolutions authorizing the filing of the petition, the acquisition of the certificate of sale, the employment of attorneys, the filing of the petition, its appearance and defense of the appeals herein in the Circuit Court of Appeals. In its petition for reorganization filed in the District Court it alleged (Rec. 2, 5):

> "(1) The debtor *is* a corporation organized and existing under the laws of the State of Illinois. • • •
>
> (3) That the debtor *is* a corporation *engaged in the business* of owning, leasing, operating, controlling and managing one building and the site whereon said building is situated. • • •
>
> (13) That petitioner *is* unable to meet its debts as they mature and that it *desires* to effect a plan of reorganization pursuant to Section 77B of the Bankruptcy Act." (Italics ours.)

In the petition filed June 21, 1935, it requested (Rec. 8):

> "• • • that an order may be entered directing the Metropolitan Trust Co. to turn over said property

to your petitioner * * * for the purpose of managing and supervising said property. * * *"

The only case, other than the present decision, in which a Circuit Court of Appeals has passed upon the right of a dissolved corporation to file a voluntary petition under the Bankruptcy Act is *Vassar Foundry Co.* v. *Whiting Corp.*, 2 F. (2d) 240 (6th Cir.). There the construction of the Michigan courts, that a corporation dissolved pursuant to its statutes is non-existent, was said to be "obligatory upon the federal courts"; and it was held that the defunct corporation could not file a voluntary petition more than four months after its dissolution.

There have been cases in which lower federal courts have held that an involuntary petition may be filed against a dissolved corporation which has, upon or prior to its dissolution, become subject to the operation of the Bankruptcy Act. These decisions, however, are based on the ground that the right of creditors to the administration of the assets of an insolvent debtor under the Bankruptcy Act cannot be defeated by dissolution. *Hammond, et al.* v. *Lyon Realty Co. et al.*, (C. C. A. 4th Cir.) 59 F. (2d) 592; *Thornhill* v. *Bank of Louisiana*, Fed. Case No. 13992, *Cresson & Clearfield Coal & Coke Co.* v. *Stauffer*, (C. C. A. 3rd Cir.) 148 Fed. 981; *In re 211 East Delaware Place Building Corporation*, 76 F. (2d) 834 (C. C. A. 7th Cir.).

Moreover, there is a clear distinction between a voluntary and an involuntary petition. In the former, the bankruptcy court recognizes an entity capable of invoking its jurisdiction; in the latter, under the conventional "trust fund" doctrine, it seizes upon the assets as a *res* for administration. (*In re Double Star Brick Co.*, 210 Fed. 980.)

Recognition of the legal extinction of the respondent under the law of Illinois would not defeat the jurisdiction of the federal courts to administer the affairs of an in-

solvent corporation, as the Circuit Court of Appeals holds. The law of Illinois provided a reasonable period (two years) for winding up the affairs of a defunct corporation and during that time respondent (or its creditors) could have applied to the bankruptcy court for relief. It did not choose to do so. It did not attempt to wind up its affairs within the statutory period. Respondent offers no excuse for its neglect or refusal to comply with the statute. On the contrary, it claims a continued existence derived from the state, at the same time that it ignores the forfeiture of that right by the same authority.

The present decision, by holding that the dissolution decree is not binding in bankruptcy, in effect, extends the life of a body corporate contrary to the law of the sovereign state and creates a "legal ghost" which may exercise corporate powers and yet be immune from process, taxes and other responsibilities. The construction adopted by the Circuit Court of Appeals is not only contrary to the language and intention of Section 77B but casts doubt upon the constitutionality of that section.

Hopkins Federal Savings & Loan Association v. *Cleary*, 296 U. S. 315, 337:

> "How they [savings and loan associations] shall be formed, how maintained, how supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred."

II.

IT IS ESSENTIAL TO THE EXERCISE OF JURISDICTION UNDER SECTION 77B OF THE BANKRUPTCY ACT THAT THE DEBTOR HAVE AN INTEREST IN PROPERTY WHICH CAN BE THE SUBJECT OF REORGANIZATION.

A distinction must be observed between a proceeding in bankruptcy which has for its object the surrender and liquidation of all of the debtor's property and his discharge from the claims of creditors, and a proceeding under the recent amendments (including Section 77B) which is intended to rehabilitate the debtor by permitting him to retain his property. When discharge from debt is the object, the bankrupt need not have property, but when rehabilitation is sought the ownership of property is essential to relief. The jurisdiction conferred upon the bankruptcy court by Section 77B would be futile unless a debtor corporation is possessed of a property interest upon which the elaborate machinery of administration and reorganization provided for by that Section, can operate.

We submit that Section 77B contemplates, as a minimum requirement, that the debtor corporation have property of a kind and character that will pass to a trustee in bankruptcy. The language of the section is (77B (c) (2)):

> "* * * every such trustee, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge, and consistently with the provisions of this section, all the powers of a trustee appointed pursuant to Section 44 of this Act, and if authorized by the judge, the same powers as those exercised by a receiver in equity to the extent consistent with this section, and, subject to the authorization and control of the judge, the power to operate the business of the debtor during such period, fixed or indefinite as the judge may from time to time prescribe."

A trustee appointed under Section 44 (11 U. S. C. § 72)

derives his title to the property of the bankrupt by virtue of Section 70 of the Act (11 U. S. C. § 110) which provides that the trustee—

> "shall * * * be vested by operation of law with the title of the bankrupt * * *, to all * * *
>
> "(5) property which prior to the filing of the petition, he [the bankrupt] could by any means have transferred or which might have been levied upon and sold under judicial process against him."

In determining whether the bankrupt is the owner of property within the meaning of this section, resort must be had to the law of Illinois. *Board of Trade* v. *Johnson,* 264 U. S. 1, 10. By that law, respondent, at the time of the filing of its petition, had no property which it could transfer or which could be levied upon and sold under judicial process. Its right to redeem from the sale upon the foreclosure of the mechanics' liens had expired. It had nothing but the bare possibility (subject to the first mortgage) that the certificate of sale might become void for failure of the holder to take out a deed within five years. (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 77, Sec. 31.) Under the decision of the Supreme Court of Illinois, in *Commerce Vault Co.* v. *Barrett,* 222 Ill. 169, 175:

> "This right was not such an interest as to be subject to levy and sale under execution."

Nor did this bare legal title constitute property which respondent might have transferred. Two years after the decree of dissolution, respondent's corporate existence ceased, and it was powerless to make a conveyance. (*A. J. Bates Co.* v. *United States* (Ct. Cl.) 3 F. Supp. 245, 248; Fletcher, Cyclopedia Corporations (Perm. Ed. 1933), Vol. 16, Chap. 65, Section 8137, P. 940, and cases cited). After dissolution became absolute, respondent could not enlarge its title by acquiring the outstanding certificate of sale and thus bring itself within Section 77B. Under the law of Illinois, it was incapable of accepting a conveyance

or transfer. (*A. J. Bates Co.* v. *United States* (Ct. Cl.) 3 F. Supp. 245, 248; *Duffield* v. *Duffield,* 268 Ill. 29, 38.)

Another impediment to the exercise of jurisdiction by the bankruptcy court exists. The interest of respondent in the premises, after the expiration of the redemption period, does not constitute a jurisdictional *res,* under Section 77B of the Act. The legal owner of the certificate of sale might present it at any time and obtain a deed, and under the doctrine announced in *Louisville Bank* v. *Radford,* 295 U. S. 555, the bankruptcy court could not destroy or suspend his right so to perfect his title *In re Lowmon,* 79 F. (2d) 887 (C. C. A. 7th Cir.). In these circumstances, jurisdiction cannot exist when a reorganization effected under the supervision of the court could be nullified by the issuance of a deed.

The decision of the Court of Appeals attempts to surmount these objections to jurisdiction by recognizing the validity of the transfer of the certificate of sale to respondent more than four years after its dissolution. In so doing it not only recreates an entity no longer existing, but having given life to this phantom, endows it with property rights which are denied by the law of Illinois; and it violates a principle well expressed in one of its own opinions, *In re Lowmon,* 79 F. (2d) 887, 891:

> "We think there is nothing in the constitutional clause conferring upon Congress the control over bankruptcy which authorizes it to change property rights already created by the states. Under the proper exercise of that power, federal courts may be authorized to assume jurisdiction over and to administer property of bankrupts, but they must administer that property as they find it, and they have no power to create new rights in it for the benefit of either debtor or creditor."

CONCLUSION.

We respectfully submit that for the reasons stated the petition for certiorari filed herein should be granted.

Respectfully submitted,

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RICHARD H. HOLLEN,
GEORGE W. OTT,
CHARLES J. CALDERINI,
Counsel for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

Nos. 23 and 24

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE, UNDER TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 23 AND No. 24.

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493,

Petitioner.

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

BRIEF FOR PETITIONER.

MAY IT PLEASE THE COURT:

These cases come to this Court on writs of certiorari directed to the Circuit Court of Appeals for the Seventh Circuit, to review decrees of that Court affirming decrees entered by the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding instituted by respondent for its corporate reorganization under Section 77B of the Bankruptcy Act. The proceeding was initiated by the voluntary petition of respondent, an Illinois corporation, filed more than four years after it had been dissolved by judicial decree in a suit filed by

the Attorney General of the State of Illinois, and more than two years after the expiration of the time allowed by Illinois statute for winding up its affairs.

The District Court assumed jurisdiction over respondent and over real estate which it claimed to own, for the purpose of reorganization under Section 77B; and to that end restrained petitioner from the further prosecution of proceedings in the courts of Illinois to foreclose the lien of a first mortgage on the real estate, and directed the receiver in the foreclosure proceedings to turn over possession of the real estate to the temporary trustee which it appointed. The jurisdiction of the District Court to proceed under the voluntary petition of the respondent is challenged by petitioner.

1. Reference to Official Report of Opinions of Lower Courts.

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals is officially reported at 86 F. (2d) 667, and is printed in full in the record (R. 107, *et seq.*). The opinion was delivered by District Judge Lindley, with whom Circuit Judge Sparks concurred. District Judge Briggle dissented.

2. Statement as to Jurisdiction.

The decrees of the Court of Appeals were entered on November 30, 1936 (R. 113, 114). Petitioner's petition for rehearing in the Court of Appeals was filed on December 19, 1936 (R. 114), and was denied on January 7, 1917 (R. 115). The cases come to this Court on petition for certiorari filed herein on April 7, 1937, this petition having been granted by orders entered in this Court on May 17, 1937 (R. 120).

3. Statement of the Case.

On April 10, 1929, respondent, Forty-one Thirty-six Wilcox Building Corporation, was organized as a corporation under the laws of the State of Illinois for the sole purpose of owning and operating one building and the site therefor (R. 40). Thereafter it acquired title to certain real estate and the building thereon, located at 4136 Wilcox Avenue in the City of Chicago, Illinois. At the time respondent acquired the property it was subject to the lien of a first mortgage securing the payment of bonds aggregating $95,000, which respondent agreed to pay (R. 19). On December 26, 1929, respondent further encumbered the property with a junior mortgage securing the payment of its notes for $15,000 (R. 108). These premises are the *only* property ever owned or possessed by respondent, and petitioner is now the trustee under both mortgages (R. 71).

On May 22, 1931, in a suit brought by the State of Illinois in the Superior Court of Cook County, Illinois, a decree was entered in which the Court found that respondent and its board of directors had ceased to transact business as a corporation; had discontinued the exercise of corporate functions; and had failed to comply with the General Corporation Act of the state relative to the filing of annual reports and payment of license fees or franchise taxes. Upon the basis of these findings, the Court decreed the dissolution of respondent as a corporation, and declared its charter and authority as such to be null and void (R. 51, *et seq.*). No appeal was taken from this decree, and respondent has made no attempt to have it set aside or to have its corporate status and powers restored by the State of Illinois.

On July 10, 1931, a decree was entered against respondent in the Circuit Court of Cook County foreclosing certain mechanics' liens on its property, subject only to the

lien of the first mortgage, and ordering a sale of the property if the mechanics' lien claims were not paid within three days (R. 56, *et seq.*). The claims were not paid, and pursuant to the decree the property was sold on August 5, 1931, and a master's certificate of sale was issued to the purchasers, entitling the holder thereof to a deed to the premises upon the expiration of the period of redemption (R. 65, 66; Smith-Hurd Rev. Stat. 1929, Ch. 77, Sec. 16; see App. p. 41). Respondent's right to redeem the property expired on August 5, 1932, and the right of its creditors to redeem expired on November 5, 1932 (Smith-Hurd Rev. Stat. Ill. 1929, Ch. 77, Sec. 18, 20; see App. pp. 41, 42). Neither respondent nor any of its creditors redeemed the property within the period allowed by the Illinois statute.

On October 24, 1931, the Madison & Kedzie State Bank, the predecessor of petitioner, as trustee under the first mortgage upon the property, instituted suit in the Superior Court of Cook County, Illinois, to foreclose the lien of its mortgage, and on November 10, 1931, the trustee under the junior mortgage also commenced suit in the same court to foreclose the lien of its mortgage (R. 71, 72). A receiver appointed in these foreclosure suits took possession of the property, and was in possession at the time when this case was heard in the District Court (R. 33, 71). Respondent was made a party to and appeared in both suits by its attorney; it offered no defense, but its attorney received and checked accounts and reports from time to time served upon parties of record by the receiver (R. 31, 73). During the pendency of the foreclosure suits respondent had nothing to do with the property (R. 27, 28), and consequently transacted no business.

The statutes of Illinois provided for a two-year period following respondent's dissolution as a corporation and the cancellation of its charter, during which respondent's

corporate existence was continued for the purpose of winding up its affairs (Smith-Hurd. Ill. Rev. Stat. 1929, Chap. 32, Secs. 14, 79; see App. p. 41). This period of two years expired on May 22, 1933. At that time respondent had no property of any kind, except the possibility that the certificate of the sale of the Wilcox Avenue property might become void if the holder failed to take out a deed within five years of the expiration of the period of redemption (Smith-Hurd Ill. Rev. Stat. Chap. 77, Sec. 31; App. p. 42)—a possibility which was, in any event, subject to the lien of the mortgages and the suits then being prosecuted for the foreclosure thereof.

In May, 1935, one Willens and his lawyer, Mitchell Edelson, conceived a plan for the reorganization of respondent under Section 77B of the Federal Bankruptcy Act (R. 34, 35). Pursuant to this plan, Mrs. Fay Fischel, her father, Hyman Schulman, and her brother, Sam Schulman, the three persons who now claim to own all the stock of respondent, acquired that stock from the persons who then owned it. Stockholders' and directors' meetings were held in May, 1935, for the purpose of electing officers and directors (R. 24) and authorizing the filing of a petition for the reorganization of respondent under Section 77B of the Bankruptcy Act (R. 31). One Myron Alexander, a friend of Edelson's (R. 54), then acquired and assigned to the respondent the certificate of sale issued on the foreclosure of the mechanics' liens (R. 35, Debtor's Ex. 3, R. 46; Debtor's Ex. 5, R. 48; Debtor's Ex. 7, R. 50), the Schulmans having refused to go on with the matter unless this was done (R. 35).

One June 13, 1935, respondent filed its petition for reorganization under Section 77B of the Bankruptcy Act (R. 2, *et seq.*). Thereafter, on June 21, 1935, after notice to all parties, including counsel for petitioner (R. 6), it filed

its petition praying that the receiver appointed in the foreclosure suits in the state court be directed to turn over to it the premises in his possession and that the complainants in those suits be restrained from the further prosecution thereof (R. 7, 8). Petitioner filed an answer to these petitions (R. 9, *et seq.*), denying that respondent was a corporation or that the bankruptcy petition was filed in good faith, and setting up the corporate dissolution of petitioner, the sale of its property, the foreclosure proceedings pending in the State court and the claims of petitioner therein.

These petitions and the answer of petitioner were referred to a Special Master, who held hearings and reported in effect that respondent's bankruptcy petition had been filed in good faith; that it had legal capacity to file the petition under Section 77B, and that its petition was sufficient to confer upon the court jurisdiction over respondent and the premises in question (R. 70, *et seq.*). Petitioner filed exceptions to this report, alleging, among other things, the errors of the Special Master in finding that respondent had corporate capacity to file the petition and that it had filed the petition in good faith, and setting up that the action of the Special Master was a denial of full faith and credit to the laws of Illinois and the decree of the State court (R. 77, *et seq.*). The District Court overruled petitioner's exceptions and confirmed the Master's report (R. 79), and thereafter appointed a Temporary Trustee for respondent; required the state court receiver to deliver possession of the premises to the Trustee; and restrained petitioner from further prosecution of its foreclosure proceedings (R. 80, 83).

Petitioner then prayed and was allowed an appeal in the District Court (R. 87, 91), and was also allowed an appeal by the Circuit Court of Appeals (R. 102), posting a bond for $5,000 to stay proceedings during the appeal (R. 91, 92). The appeals were then consolidated in the Court of Appeals (R. 102). The Court of Appeals (R. 113) affirmed

the order of the District Court, holding (R. 107, *et seq.*) that the laws of Illinois, the proceedings thereunder in the Illinois courts and the lapse of time were ineffective to disqualify respondent from proceeding under Section 77B of the Bankruptcy Act. Judge Briggle dissented from this conclusion (R. 112). Petitioner's petition for rehearing in the Court of Appeals, filed December 19, 1936 (R. 114), was denied on January 7, 1937 (R. 115). On April 7, 1937, petitioner filed in this Court its petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit, which petition was granted by orders entered by this Court on May 17, 1937 (R. 120).

4. Specification of Errors.

Petitioner makes the following specification of errors:

(1) The Court of Appeals erred in holding that respondent was a corporation eligible to file a petition for reorganization under Section 77B of the Bankruptcy Act.

(2) The Court of Appeals erred in holding that respondent had a property interest, or was legally competent to acquire a property interest, sufficient to enable a bankruptcy court to exercise jurisdiction under Section 77B of the Bankruptcy Act.

(3) The Court of Appeals erred in holding that the decree dissolving respondent, and the statutes of the State of Illinois limiting its corporate existence thereafter, were suspended and superseded by the Bankruptcy Act and the proceedings had thereunder.

(4) The Court of Appeals erred in holding that the statutes of the State of Illinois and the orders and decrees of the Illinois courts were limitations upon or operated to defeat the working of the Bankruptcy Act.

(5) The Court of Appeals erred in holding that the

foreclosure proceedings pending in the state court were, in effect, liquidation proceedings, and that by reason thereof respondent had a continuing right to file a petition under Section 77B of the Bankruptcy Act.

(6) The Court of Appeals erred in holding that the construction placed by it upon the Bankruptcy Act and its exercise in this case was not a violation of petitioner's rights under the Fifth and Tenth Amendments to the Constitution of the United States.

5. Summary of Argument.

(1) The law of the State of Illinois must be held to be conclusive on the question of respondent's corporate existence and capacity. This is the rule consistently followed and approved by this and other courts. If it be applied in the case at bar, it follows that under the law of Illinois, respondent's corporate life and entity had been wholly terminated. Everything required to be done by the Illinois statute to terminate respondent's existence was done, and respondent has made no effort to have its former corporate status restored. For two years after its dissolution respondent's activities were limited as provided by Illinois law, and after the expiration of that period, it had no corporate capacity to file a petition under Section 77B of the Bankruptcy Act, or to institute any other litigation of any character.

(2) The language of the Bankruptcy Act, and particularly of Section 77B thereof, contemplates that a corporation filing a petition thereunder shall enjoy an existence under the statutes of the state of its creation. The law does not provide for the filing of such a petition by a corporation which has ceased to exist. By virtue of the dissolution proceedings under the Illinois law, respondent's entity as a corporation was terminated; consequently, it had

no right, under the language of the Bankruptcy Act, to file the petition here in issue.

(3) There is no conflict between the statutes of Illinois relating to the dissolution of Illinois corporations and the Bankruptcy Act. Nor is there such a conflict between the decree entered by the Illinois court dissolving respondent and the Bankruptcy Act. The Illinois law under which respondent was dissolved does not purport to be, and is not, such an insolvency law. It relates only to the formation of corporations and to their dissolution for the causes specified therein. Nor were the mortgage foreclosure proceedings, pending in the state court, proceedings having for their object the liquidation of respondent's property. They were no more than proceedings to enforce a mortgage lien upon specific property of respondent, and did not contemplate any procedure such as would be appropriate in the liquidation of respondent's assets. The effect given to Section 77B of the Bankruptcy Act by the opinion of the Circuit Court of Appeals creates serious doubt as to the constitutionality of that Section.

(4) The decision of the Court of Appeals in the case at bar finds no support in any reported decision and is in direct conflict with a decision of the Court of Appeals for the Sixth Circuit. In other cases in which the principle has been discussed, the opinions of the various courts support the position here advanced by petitioner.

(5) Section 77B of the Bankruptcy Act contemplates the possession by a petitioner thereunder of property which can be subjected to the processes of reorganization. In this respect it differs from the ordinary bankruptcy proceeding which has for its sole object the discharge of an insolvent debtor from his debts. At the time the petition herein was filed by respondent, it had no property capable of management, operation or reorganization, and by virtue

of its dissolution under the laws of Illinois it had been rendered incapable of acquiring or holding such property. Consequently, there was no jurisdictional *res* upon which the bankruptcy court could operate.

I.

RESPONDENT, A DISSOLVED CORPORATION, HAD NO CAPACITY TO FILE A PETITION FOR CORPORATE REORGANIZATION UNDER SECTION 77B OF THE BANKRUPTCY ACT AFTER THE EXPIRATION OF THE TWO-YEAR PERIOD ALLOWED BY THE LAW OF THE STATE OF ITS CREATION FOR THE WINDING UP OF ITS AFFAIRS.

(a) *Respondent's existence and its corporate capacity to act must be determined under the law of the State of Illinois. Under that law, the decree of dissolution entered by the Illinois court effectively terminated respondent's corporate existence, except as that existence was continued by the Illinois statutes for a period of two years for the purpose only of collecting debts due it, selling and conveying its property and effects, and prosecuting and defending suits at law and in equity in its corporate name.*

It cannot be doubted that the law of Illinois controls in determining whether respondent had legal capacity to do what it has attempted to do. In *Mumma* v. *The Potomac Company*, 33 U. S. 281, decided in 1834, this Court held that a judgment entered in 1818 against the corporate defendant could not be enforced in 1828, the defendant having surrendered its corporate charter in accordance with state law during the interval. The Court said at page 285:

> "* * * there is no pretence to say, that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man."

And at page 287 it was said:

> "A corporation, by the very terms and nature of its political existence, is subject to dissolution by a sur-

render of its corporate franchises, and by a forfeiture of them for wilful misuser and nonuser. Every creditor must be presumed to understand the nature and incidents of such a body politic, and to contract with reference to them. And it would be a doctrine new in the law, that the existence of a private contract of the corporation should force upon it a perpetuity of existence contrary to public policy, and the nature and objects of its charter."

In *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257, the same holding was made. There a motion had been made to substitute as appellant a new corporation which had succeeded to the property and obligations of the corporation to which the writs of error had been allowed. The original corporation had been dissolved by decree of an Oklahoma court. The motion was denied; this Court holding that the dissolution of a corporation could not be distinguished, in effect, from the death of a natural person. It was said at page 259:

"But corporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation. The matter is really not procedural or controlled by the rules of the court in which the litigation pends. It concerns the fundamental law of the corporation enacted by the State which brought the corporation into being."

On this point see also: *Oregon Railway Co.* v *.Oregonian Ry. Co.,* 130 U. S. 1, 20; *Head* v. *Providence Insurance Co.,* 2 Cranch, 127, 167; *Fertilizing Co.* v. *Hyde Park,* 97 U. S. 659, 667; *Scovill* v. *Thayer,* 105 U. S. 143, 148; *McCormick* v. *Market Bank,* 165 U. S. 538, 550.

Respondent was organized on April 10, 1929, under the provisions of an act of the Legislature of the State of Illinois known as the General Corporation Act of 1919 (Smith-

Hurd Ill. Rev. Stats. 1929, Chap. 32). Section 6 of said Act provided:

> "Each corporation organized under this Act shall, subject to the conditions and limitations prescribed by this Act, have the following powers, rights and privileges:
>
> • • • • •
>
> (13) to cease doing business and to surrender its charter."

Section 76 of said Act provided:

> "Any corporation which has ceased to do business as a corporation, or has discontinued to exercise its corporate functions, shall thereby forfeit its charter. The Attorney General shall proceed by information in equity to declare such forfeiture."

Section 118 of said Act provided:

> "In the case any corporation, required herein to pay a franchise tax, shall fail, neglect or refuse to file its annual report, as required by this Act, or shall fail, neglect or refuse to pay the franchise tax assessed against it on or before the thirty-first day of July of the year in which such franchise tax becomes due and payable, the Attorney General shall file an information in equity against such corporation, either in the Circuit Court of Sangamon County or the Circuit Court of such other county in the State as to the Attorney General may seem best for the dissolution of a domestic corporation for abandonment and non-user of its charter."

The Act prescribed the method by which the Attorney General should proceed to dissolve corporations delinquent in the filing of reports or the payment of franchise taxes and provided (Sec. 123):

> "In case the court shall decree a dissolution of such corporation, or shall enjoin a foreign corporation from further transacting business in this State, the clerk shall certify such fact to the Secretary of State. Upon the filing of such certificate such dissolution shall be complete."

Respondent was also subject to an Act of the Legislature

of Illinois, adopted in 1895, providing that any corporation organized under general or special law, which "has ceased to do business as a corporation or has discontinued the exercise of corporate functions", shall be deemed to have "abandoned its corporate franchises" and might be dissolved at the instance of the Attorney General in proceedings substantially identical with those provided for by the 1919 Act (Smith-Hurd Ill. Rev. Stats. Chap. 32, Sec. 190 197). The Act of 1895 also provided (Sec. 7, Smith-Hurd Ill. Rev. Stats. Chap. 32, Sec. 196):

> "Upon the hearing of the information the court may decree a dissolution of such corporation, and upon notice by the Attorney General in writing of such decree being filed with the Secretary of State and entered upon the records of his office, the dissolution of such corporation shall be complete."

Proceeding under both the 1895 Act and the General Corporation Act of 1919, the Attorney General of the State of Illinois filed an information in the nature of a bill in equity in the Superior Court of Cook County for the dissolution of respondent. Notice of the suit as required by these Acts was given respondent, but it did not appear or answer the information (R. 51-52).

On May 22, 1931, the Superior Court of Cook County entered its decree (R. 51 *et seq.*) defaulting respondent and ordering "that said bill be taken as confessed against the said Forty-One Thirty-Six Wilcox Building Corporation." The decree found (R. 53) that respondent and its directors had ceased to transact business as a corporation, had discontinued the exercise of corporate functions and had failed to file annual reports and pay fees and taxes as required by statute. The decree further found that respondent had been certified by the Secretary of State to the Attorney General for failure to pay taxes and file annual reports as required by statute, the certification being for the purpose of instituting proceedings for dissolution of respondent (R. 53).

The court decreed that respondent "be, and the same is hereby dissolved, and that the charter and authority of said corporation be, and the same is hereby declared to be null and void and of no force and effect whatever, and that said defendant pay the cost of this suit, and that the clerk of this court certify the fact of such dissolution to the Secretary of State of Illinois." (R. 53). On June 26, 1931, a copy of the Decree of Dissolution certified by the Clerk of the Superior Court of Cook County was filed in the office of the Secretary of State of Illinois, as required by the statute then in force (R. 54-55).

The settled rule in Illinois is that in the absence of statutory prolongation, a decree of dissolution absolutely terminates corporate entity and capacity. In *City Insurance Co.* v. *Commercial Bank*, 68 Ill. 348, the court said (p. 350) that

> "* * * where a corporation surrenders its charter, or where it ceases to exist by the efflux of time, or where its charter is declared forfeited by a judicial tribunal of competent jurisdiction, it can neither sue nor be sued, although the obligation of its contracts survive, and may be enforced against any property that belonged to the corporation which has not passed into the hands of *bona fide* purchasers."

To the same effect are the cases of *Life Association of America* v. *Fassett*, 102 Ill. 315, 325, and *American Exchange Bank* v. *Mitchell*, 179 Ill. App. 612, 615.

The General Corporation Act of Illinois under which respondent was organized, became effective July 1, 1919. The applicable provisions of that Act, which remained in effect for more than two years after respondent's dissolution*, were as follows (Smith-Hurd Ill. Rev. Stats. 1929, Ch. 32, Sec. 14, 79):

"§ 14. All corporations organized under the laws

* The present Business Corporation Act of the State of Illinois became effective July 13, 1933 (Ill. State Bar. Ass'n., Ill. Rev. Stats. 1937, Ch. 32).

of this State, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporation and selling and conveying the property and effects thereof. Such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity."

"§ 79. The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporations, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution."

The effect of these sections, as construed by the courts of Illinois, was that upon the entry of a decree of dissolution, a corporation ceased to exist as a legal entity, except to the extent that its capacity was continued for a limited time for the specific purposes set forth in Section 14. By Section 79, creditors were required to pursue their remedies against the corporation by bringing suit and obtaining the service of process within the prescribed period. After the expiration of two years, the legal existence and the corporate powers of the dissolved corporation were extinguished, and thereafter no action could be commenced by or against it.*

Thus, in *Dukes* v. *Harrison & Reidy*, 270 Ill. App. 372, a creditor obtained a judgment against a corporation which was subsequently dissolved. More than two years after dissolution the creditor filed a bill in equity to enforce the liability of stockholders for unpaid subscriptions. The dissolved corporation, which by the statute was a necessary party, filed a special appearance and moved to quash serv-

* The only exception to this general statement which need be noted is that when the corporation had begun the prosecution or defense of a suit, or creditors had commenced action, within the two-year period, corporate capacity to sue or defend was continued for the purpose of that suit alone.

ice and to dismiss the suit on the ground that it had been dissolved more than two years prior to the service of summons; that by reason thereof, it had no corporate capacity for any purpose and could not be brought within the jurisdiction of the court by the delivery of a summons to one of its former officers. The court approved this contention, saying at page 382:

> "Section 53 of the Corporation Act [upon which complainant relied as authority for the bringing of the suit] must be construed with sections 14 and 79 of the same act, and it is apparent that complainant cannot avail herself of the remedy provided by this statute for the reason that her bill of complaint was not filed until September 14, 1931, which was more than two years after the dissolution of the corporation.
>
> "The attempted service of summons on the defendant corporation did not confer jurisdiction on the court and the motion to quash the service of the summons and to dismiss Harrison & Reidy, a corporation, as a party defendant should have been allowed."

In a similar case, *Consolidated Coal Co.* v. *Flynn Coal Co.*, 274 Ill. App. 405, the same interpretation was placed upon the Illinois law. A bill in equity was filed by a creditor against a corporation and its directors and stockholders, more than two years after dissolution of the corporation, to enforce a statutory liability for unpaid stock subscriptions, and a claimed liability of the directors for assenting to an indebtedness in excess of the corporate stock of the corporation. The court held that the summons issued in the case was ineffective and that the bill was properly dismissed for want of equity. It said at page 411:

> "The right to maintain this action is wholly statutory, and must be exercised within the statutory time fixed by the legislature, but for this provision the complainant could not maintain an action for relief such as prayed for in the bill. The present bill of complaint was not filed within the time provided for by sec. 79 of the Corporation Act, and sec. 2 of chap. 83 of the Statute of Limitations does not apply, *Dukes* v. *Harri-*

> *son & Reidy,* 270 Ill. App. 372, and the court properly sustained the demurrer of the defendant J. R. Troutman."

The provisions of the Illinois statute were also considered by the United States Court of Claims in *Charles A. Zahn Co.* v. *United States,* 6 Fed. Supp. 317, where it was held (p. 319) that two years after dissolution an Illinois corporation "ceased to exist" and was incapable of commencing a suit. In *A. J. Bates Co.* v. *United States,* 3 Fed. Supp. 245, the same court held that a waiver of the statute of limitations executed on behalf of a corporation by its former officers more than two years after dissolution, was void. The court said (page 248):

> "From and after that date [two years after dissolution] the Illinois corporation was extinct for all purposes. It was as nonexistent as if it had never been created, had no stockholders or officers, and was incapable of transacting any business whatsoever."

Respondent has cited two decisions of the Supreme Court of Illinois claimed to establish a contrary principle. In the first case, *Life Association of America* v. *Fassett,* 102 Ill. 315 (1882), an Illinois creditor commenced an attachment proceeding in an Illinois court, against the Illinois property of a Missouri insurance company doing business in Illinois. Thereafter the insurance corporation was dissolved by the decree of a court of Missouri; and the receiver appointed in that proceeding pleaded the dissolution in abatement of the Illinois attachment case. The Supreme Court of Illinois held (p. 324) that a prior attachment lien could not be displaced by subsequent dissolution, and that since the then law of Illinois provided for the administration of the property of dissolved corporations and extended their corporate life two years after dissolution for that express purpose, the provisions of that law should be applied to foreign corporations doing business in Illinois. Thus, the court did

no more than apply the Illinois law to a dissolved Missouri corporation doing business in Illinois, as an answer to the claim that the dissolution of that corporation created a complete defense to a previously existing suit. The court also pointed out (pp. 328, 329) that the decree of dissolution entered in the Missouri court contemplated the further existence of the corporation for the purpose of settling its affairs, and (p. 329, 330) that if the corporation was entirely defunct, it had no ability to bring the case to the Supreme Court.

In the second case, *Singer & Talcott Co.* v. *Hutchinson*, 176 Ill. 48 (1898), a suit was commenced against an Illinois corporation within two years after its dissolution, as permitted by the then Illinois statute, but there was no final judgment in the case until after the expiration of that period. The corporation then sued out a writ of error to reverse this judgment, and it was objected that the writ could not be maintained, because under the common law conception a writ of error was a new suit and as such was barred by the two-year limitation. The Illinois Corporation Act as it then existed did not limit to two years the time for bringing suits *against* a dissolved corporation, and the Practice Act then in force authorized any "party" to litigation to prosecute a writ of error to review a judgment against it. After referring to the statute as it then was, the court said at pages 52 and 53:

> "These sections, therefore, continued its life, for the respective periods stated, as an entity, so that it could sue or be sued *as a party* to the action, and therefore its rights, *as such party*, are conserved the same as the rights of other parties to actions, not only by the constitution, but by sections 67 and 90 of the Practice act, which provide *that a party* to an action may prosecute a writ of error, or, as expressed in section 90, '*any party* to such cause shall be permitted to remove the same to the Supreme Court by appeal or writ of error.' Clearly, this corporation was a party to the cause and

> came within the provisions of this law. It is conceded the corporation would have had the right to *appeal* from the judgment, because, as stated, the appeal would have been a continuation of the same suit. But the constitution and the statute grant the right to remove the record to 'any party to such cause' by writ of error as well as by appeal. For this purpose the entity of this corporation, as a party to the cause, continued after the judgment was rendered as well as before. A writ of error is a writ of right, both by the common law and our statute, as to any one who is a party to the record or who is shown by the record to be prejudiced by the judgment. (*McIntyre* v. *Sholty*, 139 Ill. 171.) This corporation was kept alive for the purpose of being made such a party to the original action, and, being so alive for such purpose, is preserved by the Practice act with authority to prosecute an appeal or a writ of error.''

This Court has also passed upon the rights and obligations of corporations dissolved under the Illinois statutes in effect prior to 1919. In *Ewen* v. *American Fidelity Company*, 261 U. S. 322, the defense made was the dissolution of the Illinois Surety Company, an Illinois corporation, under the statute then in effect. It was held that under the Illinois statute then in effect, the dissolution did not have the effect of barring a suit to recover upon a liability previously incurred.

The *Fassett case, supra*, the *Hutchinson case, supra*, and the *Ewen case, supra*, were all decided under statutes in effect prior to the enactment of the 1919 statute, under which respondent was disqualified from exercising its corporate functions. They were actions which arose at a time when under Illinois law, suits *against* a dissolved Illinois corporation were not limited to two years, but were controlled by the general Statute of Limitations. We again point out that not only is the present proceeding a voluntary petition by respondent, but the two-year limitation of the Act of 1919, under which respondent was created and dissolved, applied both to suits *by* and *against* it.

In each of the three cases the court recognized and applied the provisions of the statutes then in effect, and that is all we claim should be done here. The decisions under the statute in effect when respondent was dissolved, are uniform in holding that the lapse of two years after dissolution of a corporation destroys its legal capacity to act as a corporation.

Nor can there be any merit in a contention that the pendency of the foreclosure actions in the state court extended the life of respondent so that it might invoke the aid of the bankruptcy court for the purpose of reorganizing its business and affairs. The foreclosure actions were commenced within two years after respondent's dissolution, and in the exercise of a right granted by the Illinois statute, and under that statute and the decisions cited, could be prosecuted to decree after the two years had expired. Respondent existed after the lapse of two years only for the purpose of defending those actions, and its powers incidental to such a qualified existence were limited to the presentation of defenses in those particular cases. Certainly the pendency of those proceedings *in rem* for the enforcement of mortgage liens against specific property did not generate in respondent a continued corporate life enabling it to proceed in a different tribunal with a view to corporate reorganization. Unless this is so, the existence of a dissolved corporation might be continued indefinitely and for all purposes merely by the pendency of a suit begun within the prescribed time; and the purpose and effect of the Illinois law would be entirely defeated through the exercise of a right granted by the law itself.

(b) *Under the language of the Bankruptcy Act, the termination of respondent's corporate life under the Illinois statutes, and the lapse of two years thereafter, rendered respondent incapable of filing a voluntary petition for reorganization.*

The Bankruptcy Act contains no provision purporting to modify the rule that a corporation, dissolved in accordance with the laws of the State of its creation, has no legal existence except as permitted by the laws of that State; and no reason is apparent why an exception should be made permitting a dissolved corporation to file a voluntary petition for reorganization under Section 77B of that Act. (11 U. S. C. A. Sec. 207; 48 Stat. L. 912, as amended.)

Section 77B authorizes "any corporation, which could become a bankrupt under Section 4 of this Act" to file an original petition. Section 4 extends the right of voluntary bankruptcy to "any person." (11 U. S. C. § 22). "Person" is defined by Section 1 (19) to include "corporations": and by Section 1 (6) the term "corporations" means "all bodies having any powers and privileges of private corporations not possessed by individuals and partnerships." (11 U. S. C. § 1). It seems clear that to take advantage of the Bankruptcy Act, a corporation must have powers and privileges and not be one whose entity has been extinguished and whose powers have been revoked by force of the law to which it owed its existence.

Under the language of Section 77B it is equally clear that only an existent corporation can take advantage of its provisions. Thus, the petition must allege the "nature of the business of the debtor" and "that it desires to effect a plan of reorganization." The petition must be filed in the territorial jurisdiction in which, during the preceding six months, the corporation "has had its principal place of business or its principal assets, or in any territorial

jurisdiction in the State in which it was incorporated." During the pendency of the proceedings the court approving the petition shall "have exclusive jurisdiction of the debtor." (§ 77B (a)). A plan of reorganization adopted in any such proceeding may provide for "the issuance of new securities, (§ 77B (b) 1), "may include provisions modifying or altering the rights of stockholders, or any class of them, either through the issuance of new securities of any character, or otherwise" (§ 77B (b) 2); "may otherwise in accordance with the provisions of the section, adjust the rights, and interest of creditors and stockholders and provide for a transfer of property to another corporation" (§ 77B (b) 9).

After approving the petition or answer, the District Court and the district judge "may temporarily continue the debtor in possession * * * and shall require the debtor in possession * * * to give such notice as the order may direct to creditors and stockholders * * *" of a hearing on the order (§ 77B (c) 1). The court may authorize the debtor "* * * to issue certificates for cash, property or other consideration * * *" (§ 77B (c) 3); may "require the debtor * * * to file such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs * * *" (§ 77B (c) 4); and may permit the debtor to continue in possession of its property and operate its business (§ 77B (c)).

The judge shall confirm a plan if satisfied "that the debtor * * * is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to take all action necessary to carry out the plan" (§ 77B (f) (7)); "* * * upon final confirmation of the plan by the judge, the debtor * * * shall have full power and authority and shall put into effect and carry out the plan * * *"; and "the court may direct * * * the debtor

* * * to make any such transfer or conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees as may be required by the plan" (§ 77B (h)).

We submit that these and other provisions requiring continuous activity and full capacity during administration and reorganization cannot be reconciled with the present holding that respondent, deprived of all corporate powers, except the right to defend pending litigation, and civilly dead, is a "corporation" which can become a debtor by voluntary petition. Section 77B was intended to prevent the liquidation and winding up of an insolvent corporation, and to furnish a means for its rehabilitation by providing machinery for the adjustment of its obligations and the reorganization of its affairs.* *City Bank Co.* v. *Irving Trust Co.*, 299 U. S. 433, 438. But it is obvious that before there can be such a rehabilitation, there must be something to rehabilitate.

All of respondent's acts in the proceeding have been based upon the assumption that its corporate powers have continued to exist, notwithstanding its dissolution in May, 1931. It has undertaken to adopt resolutions authorizing the filing of the petition; acquire the certificate of sale; employ attorneys; file the petition; and appear and defend this suit. In its petition for reorganization filed in the District Court, respondent alleged (R. 2, 5):

> "(1) The debtor is a corporation organized and existing under the laws of the State of Illinois. * * *

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* The following language of the Committee of the Judiciary of the House of Representatives, in reporting Section 77B for passage indicates that it was intended that the section would apply only to an existing corporation possessed of a charter:

> "(3) The bill permits the debtor corporation to be the final reorganized corporation. This was done in the Phipps case. The charter of a corporation costs money and is an asset which should if possible be preserved for the benefit of the creditors and stockholders. Its charter would no doubt have to be amended where the plan provided for a composition rather than for an extension. The means specified in subdivision (b) for carrying out a plan includes as one of the means the amendment of the charter of the debtor." House Report No. 194, 73d Congress, 1st Session, to accompany H. R. 5884. (P. 1)

(3) That the debtor is a corporation engaged in the business of owning, leasing, operating, controlling and managing one building and the site wherein said building is situated.

(13) That petitioner is unable to meet its debts as they mature and that it desires to effect a plan of reorganization, pursuant to Section 77B of the Bankruptcy Act."

In the petition filed June 21, 1935, it requested (R. 8):

"* * * that an order may be entered directing the Metropolitan Trust Co. to turn over said property to your petitioner * * * for the purpose of managing and supervising said property. * * *"

Notwithstanding the undoubted fact that respondent was required to have a corporate existence sufficient to enable it to file a voluntary petition under Section 77B of the Bankruptcy Act, and the equally certain fact that it did not and does not have that existence, the Court of Appeals has held in this case that respondent had capacity to file such a petition more than four years after the entry of the dissolution decree, and more than two years after respondent's statutory authority to initiate any suit had ended. Such a conclusion cannot be reconciled with the language of the Bankruptcy law.

(c) *The Illinois statute relating to dissolution, and the decree rendered thereunder, do not conflict with the Bankruptcy Act; and recognition of respondent's legal extinction does not impair the jurisdiction of the bankruptcy court. Nor were the mortgage foreclosure proceedings in the State court liquidation proceedings which the Bankruptcy Act would supersede.*

No contention has been made that the Illinois statute relating to the dissolution of corporations conflicts in terms with any provision of the Bankruptcy Act, or attempts to deny any right expressly conferred on a dissolved corporation by that Act. On the contrary, as we

have shown, the Bankruptcy Act, especially Section 77B, clearly contemplates that a debtor corporation invoking its aid must enjoy a complete and present existence under state law.

The opinion of the Court of Appeals is apparently based on the proposition that the proceedings against respondent in the Illinois courts were in the nature of insolvency proceedings, and that since the Federal power over bankruptcy was supreme, the Bankruptcy Act rendered the Illinois statutes and the decree of dissolution inoperative. This basis of the decision is indicated in the following excerpt from the opinion (R. 111):

> "Jurisdiction in bankruptcy under the federal constitution comes into existence, we take it, simultaneously with the coming into existence of insolvency of the debtor. Over his acts, in marshalling and liquidating his assets, in disposing of his property, the bankruptcy power promptly extends its arms. Consequently, though a corporation may be a creature of a state, that state having created it and given it the right to exist and to make debts, charged with knowledge of this bankruptcy power, may not so frame its laws as to bring about a situation where the jurisdiction of the federal courts to administer an insolvent estate is defeated. Having given the corporation existence, it may not take away this life to defeat the working of the bankruptcy law. Until its estate has been administered, liquidated, composed or reorganized in compliance with the bankruptcy act, the jurisdiction of the bankruptcy court continues." (R. 111).

This view of the court is based upon a misconception of the nature of the Illinois statute and its effect upon the jurisdiction of the bankruptcy courts. Sections 14 and 79 of the Illinois Corporation Act were in no sense part of an insolvency law, intended to furnish a means to an insolvent debtor or its creditors for marshalling assets, adjusting claims and ultimately discharging the debtor from its obligations. They were no more than provisions by

which the sovereign limited the life and power of a body corporate which it had created. The statute did not relate to the liquidation of the affairs of a dissolved corporation. Indeed, dissolution under the Illinois statutes is not related to insolvency. (Compare *International Shoe Co.* v. *Pincus,* 278 U. S. 261; *Stellwagen* v. *Clum,* 245 U. S. 605, 613.) Under the Illinois law, a corporation might be dissolved even though it was prosperous financially. The dissolution might follow upon the lapse of the period for which the corporation was created.

Nor were the foreclosure proceedings against respondent in the state courts related in any way to the liquidation of respondent's assets, as suggested by the Court of Appeals (R. 110, 111). They were proceedings authorized by State law to enforce a mortgage lien upon specific property. Any other property of respondent was not affected thereby. If the proceedings produced a larger sum than was required to satisfy the mortgage debt, the surplus would be paid to respondent, and would not be held by the receiver in the foreclosure proceedings for the benefit of other creditors of respondent.

Nor is the conclusion different because all of respondent's property was subject to the mortgages, for the legal status and effect of a mortgage foreclosure cannot depend upon an accident in fact. If it were otherwise, two foreclosures similar in form and effect might have a different legal status because one defendant had property free from the mortgage lien and the other defendant had none. In *Duparquet* v. *Evans,* 297 U. S. 216, this court said at page 221:

> "A receivership in a foreclosure suit is limited and special. The rents and profits are impounded for the benefit of a particular mortgagee, to be applied upon the debt in the event of a deficiency. (Citing cases) The corporation retains its other property, if it has any, unaffected in its power of disposition by the de-

> cree of sequestration. The creditors retain their remedies except against the income subjected to the lien. There is neither winding up of the business nor attempt to reorganize it and set it going anew."

In accordance with the foregoing, this Court held in the case cited, that a mortgage foreclosure receivership was not an "equity receivership" within the meaning of Section 77B of the Bankruptcy Act. The decision is apposite here, for in this case as in the case cited, all assets of the mortgagor were pledged under the mortgage.

A similar holding was made in *Straton v. New*, 283 U. S. 318, where this Court held that statute of West Virginia, providing a method for the enforcement of liens, including the liens of mortgages, was not an insolvency statute, and that proceedings thereunder were not insolvency proceedings. This Court said at page 329:

> "The act is in no sense an insolvency statute, and a proceeding thereunder is not therefore avoided by the adjudication of the debtor as a bankrupt. On the contrary, it is a mere proceeding to enforce a valid lien or liens against the real estate bound thereby * * *."

The effect of the decision of the Court of Appeals in this case is to set aside the Illinois statute relating to the dissolution of corporations, and render it entirely ineffective, on the theory that its operation is incompatible with the operation of the Bankruptcy Act. The Court of Appeals has also extended the operation of the Bankruptcy Act in such a fashion as to supersede valid proceedings under state law to foreclose mortgages, upon the assumption that such proceedings are liquidation proceedings; the assumption being contrary to fact and law.

Recognition of the fact of respondent's dissolution would not defeat the jurisdiction of federal courts to administer the affairs of an insolvent corporation. The law of Illinois provided a reasonable time (two years) for winding up

the affairs of a dissolved corporation and during that time respondent (or its creditors) could have applied to the bankruptcy court for relief if the requisite jurisdictional facts had been present. Respondent did not attempt to wind up its affairs within the statutory period, and it offers no excuse for its neglect or refusal to comply with the statute. On the contrary, it claims a continued existence derived from the state, and at the same time it ignores the forfeiture of that right by the same authority.

The decision here in question, by holding that the dissolution decree is not binding upon a bankruptcy court, in effect extends the life of a body corporate contrary to the law of the sovereign state, and creates a "legal ghost" which may exercise corporate powers and yet be immune from process, taxes and other responsibilities. By extending the application of the Bankruptcy Act to mortgage foreclosure proceedings in State courts, without more, it has given the Act a wider application than is warranted. The construction adopted by the Circuit Court of Appeals is not only contrary to the language and intention of Section 77B but casts doubt upon the constitutionality of that section. In *Hopkins Federal Savings & Loan Association* v. *Cleary*, 296 U. S. 315, this Court said (page 337):

> "How they [savings and loan associations] shall be formed, how maintained, how supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred."

(d) *The decision in the case at bar is in conflict with the decisions of other courts.*

The decision of the Court of Appeals in the instant case is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit in *Vassar Foundry Co.* v. *Whit-*

ing Corporation, 2 F. (2d) 240, in which it was held that a dissolved Michigan corporation had no authority to file a voluntary petition in bankruptcy ten months after it was dissolved by the entry of a decree in the State court. The dissolution decree had been entered, under the authority of applicable state statutes, and the court had appointed a receiver to take possession of all the assets and proceed with liquidation.

Ten months after entry of the decree, the corporation, pursuant to a resolution of the same directors, filed a voluntary petition in bankruptcy in the District Court for the Eastern District of Michigan, and adjudication followed. Thereafter, upon petition of certain creditors, the order of adjudication was vacated (*In re Vassar Foundry Co.*, 293 Fed. 248), on the ground that the dissolved corporation was non-existent and hence without legal power to file a voluntary petition in bankruptcy. This order of the District Court was affirmed by the Court of Appeals for the Sixth Circuit (2 Fed. (2) 240). In its opinion the court said (pp. 240, 241):

> "Other statutes contemplate that a corporation continues in being for certain purposes even after its corporate life expires, and it has been held that dissolution proceedings under a state statute did not necessarily bar bankruptcy proceedings (*Scheuer* v. *Smith Co.*, (C. C. A. 5) 112 F. 407, 50 C. C. A. 312). But the Supreme Court of Michigan construing these sections 13563-13570, has held that a corporation dissolved thereunder was so completely nonexistent that no suit could be maintained against it. *Jacobs* v. *Bement's Sons*, 161 Mich. 416, 126 N. W. 1043. Of course, this decision as to the construction and the effect of a statute must be accepted as obligatory upon the federal courts."

The court thus gave full effect to the Michigan laws in passing upon the question of the Vassar Company's right to file the petition; and held that since under Michigan law,

it had no power to perform any corporate act, it had no power to file the petition. In the case at bar, the Court of Appeals has sustained the corporate power and ability of respondent to file such a petition, although it must be conceded that under the law of Illinois, respondent is non-existent as a corporation; and to reach this conclusion the court has, in effect, wholly nullified the State law.

The Court of Appeals for the Sixth Circuit in the *Vassar* case gave effect to the principle announced in *Waters-Pierce Oil Co.* v. *Texas,* 177 U. S. 28, and in the *Vassar* case, where this Court said (pp. 42, 43):

> "The courts of Texas have like power of interpretation of the statutes of Texas. What they say the statutes of that state mean we must accept them to mean * * *."

On the contrary, the Court of Appeals has said in this case that what the Illinois courts have said with respect to Illinois statutes is of no effect; and that the laws of Illinois relating to Illinois corporations are to be given no effect.

In the opinion of the Court of Appeals in the case at bar, it is said (86 F. (2d) 667, 669, R. 110):

> "* * * it is the settled law of this court that the corporation, thus dissolved, exists for the purpose of having 'its estate administered in a court of bankruptcy' in a proceeding 'to all intents and purposes, voluntary in character.'"

In support of this declaration, the opinion cites two decisions in the case of *In re* 211 *East Delaware Place Bldg. Corporation,* as reported in 76 F. (2d) 834 (C. C. A. 7), and in 14 Fed. Supp. 96 (D. C. N. D. Ill.). The first was a decision by the Court of Appeals for the Seventh Circuit; the second was by Circuit Judge Evans, the writer of the first opinion, while afterwards sitting on the case in the District Court.

Neither decision justifies the above quoted general statement respecting the "settled law" in the Seventh Circuit. It is true that 211 *East Delaware Place Bldg. Corporation* was an Illinois corporation and had been organized and dissolved under the same statutory provisions as the respondent here had been; but at this point all similarity ceases: The petition for reorganization in the *In re* 211 *East Delaware Place Bldg. Corporation* case was a creditors' petition; the question of the capacity of the corporation itself to file a petition was not involved. Moreover, the creditors' petition in that case was filed within ten days after the expiration of the two-year period following the entry of the dissolution decree, and charged, as an act of bankruptcy, the appointment of a receiver of the corporation in an equity proceeding, presumably before the two-year period had expired although that fact does not appear in either opinion.

In his subsequent decision in the *In re* 211 *East Delaware Bldg. Corporation case,* 14 Fed. Supp. 96, Circuit Judge Evans, who had written the opinion in the Court of Appeals, specifically recognized the difference in the effect of corporate dissolution upon the right of creditors to proceed against the debtor in bankruptcy, and upon the capacity of such a corporation to file a voluntary petition. On this subject, he said (p. 100):

> "The Circuit Court of Appeals of this circuit has held in Re 211 East Delaware Place Building Corporation, 76 F. (2d) 834, that the forfeiture of the charter of the corporation did not prevent the creditors from proceeding against the debtor in the court of bankruptcy. The only effect which this loss of corporate existence may have upon a bankruptcy proceeding is in respect to the inability of the corporation to admit acts of bankruptcy or state of insolvency or to file a voluntary petition."

From the foregoing it is, we submit, evident that the decision of the Court of Appeals in the instant case is based

on a misconception of the effect of its former decisions. In *Old Fort Improvement Co.* v. *Lea,* 89 Fed. (2) 286, the Circuit Court of Appeals for the Fourth Circuit cited the *Vassar Foundry Co. case,* 2 Fed. (2) 240, and *In re 211 East Delaware Place Bldg. Corporation,* 14 Fed. Supp. 96, in support of the statement (p. 289) that under certain conditions, "the filing of a petition in bankruptcy by a corporation is a corporate act which under state statutes can ordinarily be performed only by an existing body." Had this been the ruling in the case at bar, respondent's petition under Section 77B of the Bankruptcy Act would not have been accepted.

In re Munger Vehicle Tire Co., 159 Fed. 901 (C. C. A. 2nd Cir.), the only other case cited to support the opinion in the present case, involved an involuntary petition by creditors filed against a dissolved New Jersey corporation within four months after the commission of an act of bankruptcy. The decision of the court was rested squarely on the proposition that since the statutes of New Jersey, as construed by the State's highest court, continued the life of a corporation dissolved under those statutes, it could properly be adjudicated bankrupt in an involuntary proceeding. The court said (p. 904):

> "We are dealing with a New Jersey corporation, whose status is regulated by New Jersey statutes, and when such statutes have been construed by the highest court of New Jersey the federal courts will adopt the same construction."

The court then reviewed the New Jersey statutes, and referring to the construction placed upon them by the New Jersey courts, said at page 905:

> "Upon such construction the proclamation of default, etc., in the case at bar, did not work such a destruction of the corporation that it could not be adjudicated a bankrupt."

It is plain, that instead of supporting the decision of the Court of Appeals in the case at bar, the case cited

supports the proposition that courts of bankruptcy, as well as other federal courts, are obligated to accept the construction by the highest court of a State of that State's laws governing the dissolution of corporations created under its authority. The decision thus, impliedly at least, denies that the Bankruptcy Act supersedes or nullifies such statutes or dissolution proceedings thereunder. Our contention in the case at bar is that the Court of Appeals should have had the same regard for the Illinois law as was given to the New Jersey law in the *Munger* case. Had that course been followed, it would have been held that respondent had no capacity to file its petition.

Decisions of Circuit Courts of Appeal, other than those previously discussed, which have held that a dissolved corporation can be a party to a proceeding under the Bankruptcy Act, include *Hammond* v. *Lyon Realty Co.*, 59 F. (2d) 592 (C. C. A. 4th Cir.); *Austin* v. *Thomas*, 78 F. (2d) 602 (C. C. A. 6th Cir.); and *Old Fort Improvement Co.* v. *Lea*, 89 F. (2d) 286 (C. C. A. 4th Cir.); *Sheuer* v. *Smith & Montgomery Book & Stationery Co.*, 112 Fed. 407 (C. C. A. 5th Cir.); *Cresson & Clearfield Coal & Coke Co.* v. *Stauffer*, 148 Fed. 981 (C. C. A. 3rd Cir.); *White Mountain Paper Co.* v. *Morse & Co.*, 127 Fed. 643 (C. C. A. 1st Cir.). Even if the conclusions reached in these cases are accepted as correct, the cases themselves are distinguishable from the case at bar, in that the proceedings were either involuntary in character and based upon an act of bankruptcy committed in the preceding four months, or the state dissolution statutes were held to have continued the life of the corporation so as to authorize the filing of a voluntary petition.

A bankruptcy proceeding initiated by creditors of a dissolved corporation ordinarily stands on a distinct footing, so far as the effect of the dissolution is concerned. There, jurisdiction is predicated on the commission of an act of bankruptcy within four months before the filing of the petition (11 U. S. C. § 21), and before dissolution had be-

come final. The corporate capacity of the bankrupt, at the time the bankruptcy petition is filed, is not in that case a material element. It is also true that a dissolved corporation may have capacity to file a *voluntary* petition in bankruptcy, provided the period allowed by state statute for commencing suits by and against it, and for winding up its affairs, if such period is a limited one, has not expired.

Thus, *Hammond* v. *Lyon Realty Co.*, 59 F. (2d) 592 (C. C. A. 4th Cir.), and *Austin* v. *Thomas*, 78 F. (2d) 602 (C. C. A. 6th Cir.) involved involuntary bankruptcy petitions filed by creditors within four months after the entry of dissolution decrees; and each petition alleged an act of bankruptcy within that period. In both cases the dissolution decree had been entered in statutory proceedings in state courts for winding up corporate affairs and distributing assets.

In *Scheuer* v. *Smith & Montgomery Book & Stationery Co.*, 112 Fed. 407 (C. C. A. 5th Cir.), the state court decree dissolving the corporation was not entered until after a bankruptcy proceeding had been commenced by the filing of an involuntary petition. The dissolution decree, furthermore, was held by the court to have been procured for the express purpose of hindering and delaying creditors of the bankrupt.

Cresson & Clearfield Coal & Coke Co. v. *Stauffer*, 148 Fed. 981 (C. C. A. 3rd Cir.), was also an involuntary bankruptcy proceeding, commenced against the corporation within four months after its alleged dissolution by reason of the sale of its property and franchises upon a special execution, issued under the authority of a Pennsylvania statute. Corporate existence was held not to have been terminated by the sale.

White Mountain Paper Co. v. *Morse & Co.*, 127 Fed. 643 (C. C. A. 1st Cir.) is to the same effect.

Old Fort Improvement Co. v. *Lea*, 89 F. (2) 286 (C. C.

A. 4th Cir.) is the only decision of a Circuit Court of Appeals, except the one under review, that has come to our attention, in which a voluntary petition for corporate reorganization under Section 77B was filed by a dissolved corporation. However, the statutes of South Carolina there involved continued the dissolved corporation as a body corporate, without limitation of time, and were sufficiently broad in terms to authorize the Old Fort Improvement Co. to file its petition for corporate reorganization under Section 77B.

In *Capital Endowment Co.* v. *Kroeger,* 86 F. (2d) 976 (C. C. A. 6th Cir.), the petitioning corporation had not been dissolved, but had been ousted of its franchise in a *quo warranto* proceeding. The court upheld its right to proceed on the ground that "the fact that the debtor has been ousted from its corporate franchises in Ohio neither destroys its property nor its title thereto" (p. 979). This also was a recognition of the controlling force of the applicable State law.

II.

THE BANKRUPTCY COURT HAD NO JURISDICTION BECAUSE RESPONDENT HAD NO PROPERTY WHICH COULD BE THE SUBJECT OF REORGANIZATION UNDER SECTION 77B AND HAD NO CORPORATE CAPACITY TO ACQUIRE SUCH PROPERTY.

A distinction must be observed between a proceeding in bankruptcy which has for its object a surrender and liquidation of all of the debtor's property and his discharge from the claims of creditors, and a proceeding under Section 77B which is intended to rehabilitate the debtor by permitting him to retain his property. When discharge from debt is the object, the bankrupt need not have property, but when rehabilitation is sought, the ownership of property is essential to relief. The jurisdiction conferred upon the bankruptcy court by Section 77B would be futile

unless a debtor corporation were possessed of a property interest upon which the elaborate machinery of administration and reorganization provided for by that Section could operate. It is submitted, therefore, that it is essential to the exercise of jurisdiction under that section that the debtor have an interest in property which can be the subject of reorganization.

In determining whether the debtor has property, and the nature and extent of that property, resort must be had to the law of Illinois. *Chicago Board of Trade* v. *Johnson,* 264 U. S. 1, 10. Under Illinois law, respondent, having failed to redeem its property from sale upon the foreclosure of mechanics' liens, had nothing but the bare possibility (subject to the first mortgage) that the certificate of sale would become void if the holder failed to take out a deed within five years (Smith-Hurd Ill. Rev. Stat. 1929, Chap. 77, Sec. 31).* Upon the expiration of the two-year period after dissolution, respondent became wholly incapable of owning, conveying, or otherwise dealing with this bare legal title of which it was formerly possessed. By the rule prevailing in Illinois, this title then vested, by operation of law, in respondent's stockholders, subject to the rights of those creditors who had commenced suit within the time prescribed by Sections 14 and 79 of the Corporation Act of 1919. *Gulf Lines R. R.* v. *Golconda Ry.*, 290 Ill. 384, 392; *Mining Co., et al.* v. *Mining Co.*, 116 Ill. 170, 174. But even if it could be assumed that respondent retained this bare legal title after the two years, its interest did not constitute property which could be the subject of reorganization under Section 77B.

We submit that Section 77B contemplates, as a minimum requirement, that a debtor corporation have property of a

* Title of the owner is completely and finally divested upon the issuance of the deed. (*Allison* v. *White*, 285 Ill. 311; *Sutherland* v. *Long*, 273 Ill. 309.)

kind and character that will pass to a trustee in bankruptcy. The language of the section is (77B (c) (2)):

> "* * * every such trustee, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge, and consistently with the provisions of this section, all the powers of a trustee appointed pursuant to Section 44 of this Act, and if authorized by the judge, the same powers as those exercised by a receiver in equity to the extent consistent with this section, and, subject to the authorization and control of the judge, the power to operate the business of the debtor during such period, fixed or indefinite, as the judge may from time to time prescribe * * *".

A trustee appointed under Section 44 (11 U. S. C. § 72) derives his title to the property of the bankrupt by virtue of Section 70 of the Act (11 U. S. C. § 110) which provides that the trustee—

> "shall * * * be vested by operation of law with the title of the bankrupt * * *, to all * * * (5) property which prior to the filing of the petition he [the bankrupt] could by any means have transferred or which might have been levied upon and sold under judicial process against him."

Under the law of Illinois, respondent, at the time of the filing of its petition, had no property which it could "transfer" within the meaning of this section of the Bankruptcy Act. Two years after the decree of dissolution, respondent's corporate existence ceased, and it was powerless to make a conveyance. *Wilmington Water Power Co.* v. *Evans,* 166 Ill. 548; *A. J. Bates Co.* v. *United States,* 3 Fed. Supp. 245, 248; Fletcher, Cyclopedia Corporations (Perm. Ed. 1933), Vol. 16, Chap. 65, Section 8137, P. 940; and cases cited under Point I. Nor could its interest be "levied upon and sold under judicial process", for under the holding of the Supreme Court of Illinois in *Commerce Vault Co.* v. *Barrett,* 222 Ill. 169, 175, the bare legal title remaining in

an owner after judicial sale is "not such an interest as to be subject to levy and sale under execution."

The applicability of these principles is not affected by the fact that respondent attempted to acquire the outstanding certificate of sale issued on the foreclosure of the mechanics' liens. Under the law of Illinois, respondent was incapable of accepting a conveyance or transfer after its dissolution had become absolute and it had ceased to exist as a legal entity. *Duffield* v. *Duffield,* 268 Ill. 29, 38; *A. J. Bates Co.* v. *United States,* 3 Fed. Supp. 245, 248.

Another impediment to the exercise of jurisdiction by the bankruptcy court exists. The interest of respondent in the premises, after the expiration of the redemption period, does not constitute a jurisdictional *res,* under Section 77B of the Act. The legal owner of the certificate of sale might present it at any time and obtain a deed, and under the doctrine announced in *Louisville Bank* v. *Radford,* 295 U. S. 555, the bankruptcy court could not destroy or suspend his right so to perfect his title. In these circumstances, jurisdiction cannot exist when a reorganization effected under the supervision of the court could be nullified by the issuance of a deed.

The decision of the Court of Appeals attempts to surmount these objections to jurisdiction by recognizing the validity of the transfer of the certificate of sale to respondent more than four years after its dissolution. In so doing it not only recreates an entity no longer existing but having given life to this phantom, endows it with property rights which are denied to it by the law of Illinois, thus violating a principle expressed in *In re Lowmon,* 79 F. (2d) 887, (C. C. A. 7th Cir.), where the court said at page 891:

> "We think there is nothing in the constitutional clause conferring upon Congress the control over bankruptcy which authorizes it to change property rights already created by the states. Under the proper ex-

ercise of that power, federal courts may be authorized to assume jurisdiction over and to administer property of bankrupts, but they must administer that property as they find it, and they have no power to create new rights in it for the benefit of either debtor or creditor."

The situation produced by the opinion of the Court of Appeals in this case is indeed unique. As a result of the Court's opinion, respondent is a corporation endowed with all attributes necessary to permit the functioning of the Bankruptcy Act. Its capacity to initiate proceedings in bankruptcy has been recognized and presumably, if the bankruptcy court should permit, it has the capacity to be sued. It is assumed to have the power to acquire and dispose of property which can be reorganized under the bankruptcy law and to possess a corporate franchise which enables it to manage and administer that property. Presumably its corporate organization which the Court of Appeals has held to be existent for the purposes of the petition can be reorganized under the same franchise which the State has forfeited. In fine, according to the Court of Appeals, respondent is an existing corporation having all powers which a corporation must have for reorganization purposes under Section 77B.

Notwithstanding this, it is still certainly true that under the State law, respondent has no corporate existence; has no property or property interest capable of administration, purchase or sale; has no power to acquire such property; and is immune from taxes, franchise fees, and all of the other obligations imposed by the State of Illinois upon corporations which it creates. Such a situation is anomalous in the extreme. Certainly, if respondent as a corporation is defunct in the eyes of the Illinois law, it must be defunct for all purposes; or, on the contrary, if it still has corporate existence sufficient to permit the administration of its affairs under the Bankruptcy Act, it must have a cor-

porate existence sufficient, for example, to enable the State of Illinois to collect taxes from it. Yet, we submit the State of Illinois would have considerable difficulty in collecting taxes from a corporation which in its view and under its law was no longer existent.

The situation created by the decision here in issue is intolerable from another viewpoint. A creditor of respondent proceeding in the courts of Illinois would have no rights whatever; there would be no entity against which he could recover. Yet, if the same creditor elects at any time to pursue his remedy, if any, in the bankruptcy court, jurisdiction is held to exist. The ultimate effect of the opinion of the Court of Appeals herein is to confer perpetual life upon Illinois corporations, notwithstanding the State law and proceedings thereunder; for the Court of Appeals has said (R. 110) that a dissolved corporation exists for the purpose of having its estate administered in a court of bankruptcy, apparently without limit in time.

CONCLUSION.

We submit that the decrees in these cases should be reversed for all of the reasons assigned. The opinion of the Court of Appeals finds no support in any other decided case; on the contrary, such decisions as have been made upon facts analogous to those in the case at bar support the position which we have taken. There is plainly no reason or justice in the rule of law announced by the Court of Appeals in these cases, and if that rule is the law, the unfortunate results thereof cannot now be foreseen.

Respectfully submitted,

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APPENDIX.

Smith-Hurd, Illinois Revised Statutes, 1929, Chapter 32:

* * * * * * *

[14. *Expiration by limitation—Closing business.*] § 14. All corporations organized under the laws of this State, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporation and selling and conveying the property and effects thereof. Such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity.

* * * * * * *

[79. *Dissolution—When creditors affected.*] § 79. The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporations, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution.

* * * * * * *

Smith-Hurd, Illinois Revised Statutes, 1929, Chapter 77:

* * * * * * *

[16. *Certificate.*] § 16. When any real estate is sold by virtue of an execution, judgment, or decree of foreclosure of mortgage, or enforcement of mechanics' lien, or vendor's lien, or for the payment of money, it shall be the duty of the sheriff, master in chancery or other officer, instead of executing a deed for the premises sold, to give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or if purchased by the person in whose favor the execution or decree is, the amount of his bid, the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed, as provided in this Act.

* * * * * * *

[18. *Redemption by defendant, etc.*] § 18. Any defendant, his heirs, administrators, assigns, or any per-

son interested in the premises, through or under the defendant, may, within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the sheriff or master in chancery, or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators, or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void.

* * * * * *

[20. *Redemption by creditor, etc.*] § 20. If such redemption is not made, any decree or judgment creditor, his executors, administrators or assigns may, after the expiration of twelve months and within fifteen months after the sale, redeem the premises in the following manner: Such creditor, his executors, administrators or assigns may sue out an execution upon his judgment or decree, and place the same in the hands of the sheriff or other proper officer to execute the same, who shall indorse upon the back thereof a levy of the premises desired to be redeemed; and the person desiring to make such redemption shall pay to such officer the amount for which the premises to be redeemed were sold, with interest thereon at the rate of six per centum per annum from the date of the sale, for the use of the purchaser of such premises, his executors, administrators or assigns, whereupon such officer shall make and file in the office of the recorder of the county in which the premises are situated a certificate of such redemption, and shall advertise and offer the premises for sale under said execution as in other cases of sale or execution.

* * * * * *

[31. *Deed, when and how made—Limitation.*] § 30. When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within five years from the expiration of the time of redemption. The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the

purpose. If the time of redemption shall have elapsed before the taking effect of this Act, a deed may be given within two years from the time this Act shall take effect. When such deed is not taken within the time limited by this Act, the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

No. 23 and 24

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER A TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

REPLY BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937

Nos. 23 and 24.

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER A TRUST DEED RECORDED AS DOCUMENT No. 19325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

REPLY BRIEF FOR PETITIONER.

MAY IT PLEASE THE COURT:

The brief filed herein on behalf of respondent requires some answer, as it appears to be based upon a misconception of the law and of the position of petitioner. In replying to that brief, we shall follow the order in which argument has been presented.

A. *The Effect of the Bankruptcy Act.*

At pages 7 to 13 of its brief, respondent argues that the Bankruptcy Act, being a proper exercise of power by the Congress, is the law of each state as well as of the United

States, and that all state statutes in conflict therewith are void. This proposition of law is undoubtedly correct, and has been asserted by this Court in so many cases that it is unnecessary to cite authority therefor. This is not to say, however, that all state statutes relating to the subject are automatically repealed or annulled by virtue of the existence of the Bankruptcy Act. On the contrary, the very cases cited by respondent demonstrate that state laws on the subject of insolvency and liquidation and distribution of assets can exist and be applied, notwithstanding the existence of the Bankruptcy Act.

In the *Stellwagen case,* 245 U. S. 605 (page 8, respondent's brief), this Court specifically held that certain Ohio statutes, being consistent with the Bankruptcy Act, were not voided by it. In reaching that conclusion, this Court held that state laws in conflict with the Bankruptcy Act were suspended, but added at page 613:

> "While this is true, state laws are thus suspended only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress (citing cases)."

Thus, the question for determination here is not whether the Bankruptcy Act has application notwithstanding conflicting provisions of state law, but whether the law of Illinois relating to the dissolution of Illinois corporations is in conflict with the Bankruptcy Act. We submit that there certainly is no such conflict. As pointed out, at pages 24 to 28 of our main brief, the Illinois statute under which respondent was dissolved was not a bankruptcy act or an insolvency act, and did not pertain in any way or to any extent to the subject of a corporation's inability to pay its debts or to the liquidation and sale of its assets for the benefit of creditors. It was nothing more than a rule prescribed by the State of Illinois, in the proper exercise of its power, for dealing with Illinois corporations which had

failed to comply with the rules and regulations prescribed by the State for their conduct.

The theory of respondent is apparently expressed in the statement on page 9 of its brief that

> "When the legislature of Illinois declared that the dissolution of Illinois corporations, when creditors were affected, should not impair the rights of those creditors within two years, it was enacting a statute of limitations within which the rights of such creditors should be asserted."

Certainly this is not the case. The Illinois statute in question was in no sense a limitation statute. It did not deal with an existing right of a dissolved corporation to sue or be sued. The statute created those rights, since prior to statutory enactment, dissolution of an Illinois corporation completely terminated its existence and thereafter it could neither sue nor be sued. (*City Insurance Co.* v. *Commercial Bank*, 68 Ill. 348, 350, and other authorities cited in petitioner's main brief at page 14.) The effect of the provision referred to in the above quotation from respondent's brief was only that a dissolution under the State statute should not affect a remedy against a dissolved corporation for liabilities incurred prior to dissolution, if suit therefor was brought and service had within two years thereafter. Clearly, the State had the right to insist upon some finality in the dissolution of corporations created by it.

In this case, during that two years following respondent's dissolution, the mortgage foreclosure proceedings were pending in the State Court, as was also the mechanic's lien foreclosure (R. 70-72). It must be assumed that had there been any benefit to respondent in the filing of a petition under Section 77B, it would have been filed during that two year period, which was certainly ample for the purpose.

Section 77B of the Bankruptcy Act, while authorizing an administration of a corporate debtor's property, does not undertake to create such a debtor. It assumes the existence

of a corporate debtor competent to act. But to determine whether there is such a corporation, recourse must be had to State law and action thereunder. In this case, it is clear that under the law of Illinois, respondent was not such a corporation.

The defect in the reasoning of respondent probably lies in the assumption of the Court of Appeals' that the dissolution of an insolvent corporation, by a State under State laws, defeats or impairs the jurisdiction of courts of bankruptcy over insolvent estates. It is incorrect to say, as does the opinion, that bankruptcy jurisdiction over the estates of insolvent persons "comes into existence" • • • "simultaneously with the coming into existence of the insolvency of the debtor." (R. 111). Although insolvency may be a requisite of bankruptcy jurisdiction in all cases, jurisdiction over an insolvent cannot attach until a bankruptcy petition has been filed in conformity with the provisions of the Bankruptcy Act.

State statutes affecting the bankruptcy power and the operation of the Bankruptcy Act much more directly than the Illinois statute relating to the dissolution of corporations, which affects it not at all, have been sustained. Thus, in *Mayer* v. *Hellman*, 91 U. S. 496, it was argued that the then Bankruptcy Act suspended the operation of an Ohio statute relating to the administration of assignments for the benefit of creditors, the claim being that the Ohio statute was an insolvency law. This Court rejected the claim, saying at page 502:

> "The answer is that the statute of Ohio is not an insolvency law in any proper sense of the term."

This court then pointed out that the Ohio law involved did not require assignments; did not discharge the insolvent from arrest or imprisonment; and did not release his after-acquired property from liability to creditors. The rule of the case cited is applicable in the case at bar, for

the Illinois statute under which respondent was dissolved did not even have a surface application to bankruptcy or insolvency, and its application did not depend upon any ability or disability of respondent to pay its debts.

There being no possible theory upon which the Illinois statute relating to the dissolution of corporations could be said to conflict with the Bankruptcy Act, the argument of respondent fails. That argument may be based upon the misconception of petitioner's position, as stated at page 10 of respondent's brief. It is there said that as our argument is understood, a Federal court would be ousted of bankruptcy jurisdiction if, during the pendency of a bankrupt proceeding, the bankrupt corporation was dissolved.

That is not our position or our argument. Obviously, if bankruptcy jurisdiction has attached in a proper case, that jurisdiction could not be defeated by a subsequent dissolution of the bankrupt corporation. Many conditions could be assumed under which a dissolved corporation might be subject to bankruptcy jurisdiction, and these conditions have obtained in cases dealing with the subject. But there is no profit in pursuing these possibilities in the case at bar, for in this case it is undisputed that bankruptcy jurisdiction did not attach while respondent was an existing corporation and that no effort was made to have it attach during that period in which, under Illinois statute, respondent had the existence which the Bankruptcy Act requires.

Respondent concludes its argument on this point by saying (pp. 12, 13; respondent's brief) that regardless of State law, a dissolved corporation continues subject to the Bankruptcy Act until its property has been distributed among those entitled thereto. We submit that this is not so. Conceding the supremacy of the Bankruptcy Act in all matters relating to bankruptcy, we still submit that the statute of Illinois relating to the dissolution of Illinois corporations,

and not relating to the subject of bankruptcy or insolvency, must be given full effect.

B. *The Situation of Stockholders.*

At pages 13 and 14 of its brief, respondent has urged the rights of the alleged stockholders in respondent and their right to relief under Section 77B of the Bankruptcy Act. Even if we grant the rights of stockholders in a corporation to relief under that law, it is still true that they must hold stock in a corporation qualified to file a petition under Section 77B, which respondent is not and has not been for two years.

And as a matter of equity, no injustice could be done the present stockholders of respondent. They did not acquire their stock of respondent until May, 1935 (R. 23) four years after respondent had been dissolved and the foreclosure suits started (R. 71, 72). The only property of respondent was the building at 4136 Wilcox Avenue, Chicago, and it was the only property which respondent was authorized to own and operate during its existence as a corporation. So far as the record shows, there were no creditors of respondent other than the mechanics lien claimants and the holders of bonds and notes issued and assumed by respondent.

If the foreclosure proceedings pending in the State courts of Illinois were allowed to proceed to a conclusion, the only property of respondent would be sold to pay its admitted debts, and if there was a surplus it would pass to the stockholders of respondent. Thus, those stockholders, if they really are such, will receive everything to which they are entitled in any case. If they receive more than the residue left after the satisfaction of the debts which respondent concededly owes, they can only do this at the expense of respondents' creditors. Section 77B of the Bankruptcy act does not contemplate any such result, and was not enacted

in order that stockholders of a corporation might profit at the expense of the corporation's creditors.

C. *The Decided Cases.*

In our main brief (pp. 28-35), we made some reference to other cases which dealt with variations of the point here in issue. Respondent has devoted pages 14 to 28 of its brief to a rather lengthy discussion of these cases, and this discussion requires a brief answer; principally for the reason that the essential point of each decision has not been stated.

In the *Capital Endowment Company* case, 86 Fed. (2d) 976, the decision of the court was expressly based upon the statement (p. 979) that the debtor had substantial assets other than those with respect to which it had been ousted; that its ouster from its corporate franchises in Ohio did not destroy its property or its title thereto; and that it had a continuing right to deal with that property. This was a condition which did not exist in the case at bar, as respondent's rights subsequent to its dissolution were limited to the defense or prosecution of litigation instituted prior thereto.

In the *Old Fort Improvement Company case,* 89 Fed. (2d) 286, the decision of the court was expressly based upon the fact that under state statute, the corporation had the right to file the petition. The court said at page 289:

> "But as we have seen, the statutes of South Carolina provide that a corporation of that state whose charter has been cancelled shall be continued as a body corporate for the purpose of prosecuting or defending suits by or against it but not for the purpose of continuing the business for which it was established."

In *In re* 211 *East Delaware Place Building,* 76 Fed. (2d) 834, the opinion was written by Circuit Judge Evans. As we have pointed out in our main brief the decision on its

face is not authority for the statement of the Court of Appeals in the case at bar that the settled law of this Circuit is contrary to our contention. Moreover, the same Judge Evans, in thereafter passing upon the same case at 14 Fed. Supp. 96, specifically stated at page 100 that his prior decision in the Court of Appeals was to the effect that the forfeiture of the charter of the corporation did not prevent creditors from proceeding against the debtor in bankruptcy; and that the lack of corporate existence might have the effect of rendering the corporation unable to file a voluntary petition.

Regardless of whether or not the statements of Judge Evans in the District Court case were dictum, as claimed by respondent (p. 27, respondent's brief), there can be no denial of the effect of Judge Evans' statement in the District Court as to what he actually decided in the prior decision in the Court of Appeals.

In *In re Surf Building Corporation*, 11 Fed. Supp. 295, the petition was filed by creditors, and it does not appear that that petition was not filed within two years after the corporation had been dissolved under the state statute. If it was so dissolved, the decision is not an authority against our position. Moreover, the opinion in the case was by Judge Lindley, who wrote the opinion in the case at bar and attributed to the decision of the Court of Appeals in the *Delaware Place Building Corporation case, supra*, an effect which the writer of that opinion has said should not be given it.

In the *Hammond case*, 59 Fed. (2d) 952, the corporation was dissolved on October 1, 1931, and the bankruptcy petition was filed by creditors on November 28, 1931. The petition charged an act of bankruptcy within four months next preceding the date of the filing of the petition. In addition, the Maryland statute under which receivers had been ap-

pointed for the property of the corporation involved was an insolvency statute. The issue in that case was quite different from that in the case at bar, as is shown by the court in its statement at page 595:

> "No discussion is needed to show the far reaching effect on the present system of a holding that would permit any insolvent corporation, after committing an act of bankruptcy, to oust the jurisdiction of the Federal Court by securing a decree of dissolution from the state under a statute similar to that in Maryland."

In *In re Booth's Drug Store, Inc.*, 19 Fed. Supp. 95, the West Virginia law under which the corporation had been dissolved expressly provided for the continuance of its corporate powers for a period not in excess of three years for the purpose of prosecuting or defending suits, settling up the business and disposing of the property and dividing the capital. The charter of the corporation was annulled on May 31, 1935, and the involuntary petition in bankruptcy was filed by creditors on January 19, 1937, alleging an act of bankruptcy within the four months next preceding. The action of the court was in strict conformity with the state statute defining the rights and obligations of the corporation.

In the *White Mountain Paper Company case*, 127 Fed. 643, the New Jersey statute quoted at page 645 specifically provided that a dissolved corporation should be continued as a body corporate for the purpose of prosecuting and defending suits and closing up their affairs. The court held that this statute was sufficient to permit the adjudication of the company upon the involuntary petition which had been filed.

In the *Cresson & Clearfield Company* case, 148 Fed. 981, the objection to a petition in bankruptcy filed by a creditor was that the sale of the company's property under a writ authorized by Pennsylvania statute constituted a dissolu-

tion of the corporation prior to the filing of the petition. The sale was held in September, 1905, and the petition was filed in December, 1905, alleging the sale as an act of bankruptcy within the preceding four months. The court necessarily held that an act of bankruptcy could not itself operate to defeat the application of the bankruptcy law, and also held (page 984) that the Pennsylvania statute with respect to the dissolution of a corporation did not prevent the extension of its corporate franchises for the purpose of winding up its affairs.

In *In re Thomas,* 78 Fed. (2d) 602, an involuntary petition in bankruptcy was filed by creditors within four months after the commission of acts of bankruptcy. The court held (page 603) that the Michigan decisions did not establish the proposition that the entry of a decree of dissolution upon the petition of the company caused the company to cease to exist for all purposes.

The *Munger Vehicle Tire Company* case, 159 Fed. 901, is fully discussed at pages 32 and 33 of our main brief. In that case the court held that under the New Jersey statutes, as construed by the highest court of New Jersey, a dissolved corporation had an existence subsequent to dissolution sufficient to permit its adjudication as a bankrupt on an involuntary petition.

In the *American & British Manufacturing Corporation* case, 300 Fed. 839, there was no issue as to the effect of the dissolution of a corporation against which, or on behalf of which an adjudication in bankruptcy was sought. It was only held that the existence of an equity receivership did not prevent the operation of the Bankruptcy Act.

It will be observed that in all these cases the facts differentiate them from the case at bar. In all but one of them, the adjudication in bankruptcy was had upon an involuntary petition filed by creditors. In many of them, the

petition was based upon an act of bankruptcy committed within four months prior thereto, and in some, the Bankruptcy Act was held to supersede a State insolvency statute. In the case at bar, no bankruptcy petition has been filed by creditors, no act of bankruptcy has been committed by respondent, and no State insolvency law is involved. The essential fact is that in all of the cases cited full effect was given to the State statutes under which the corporation involved was organized and its existence terminated. The case at bar is the only case, so far as we know, in which such a State statute is set completely aside and held in effect to be ineffective and of no force.

As we have indicated, it may be that had the facts been different in the case at bar, an adjudication of respondent as a bankrupt would have been proper. Thus, if respondent was being liquidated under a State statute; or had respondent filed its petition within the two years following its dissolution; or had it committed an act of bankruptcy during that period and this act of bankruptcy had been followed by the filing of an involuntary petition within four months thereafter, the conclusion to be reached in this case might be different. But it is profitless to speculate on these possibilities, for none of these things are true in the case at bar. The cases cited support our argument, for in all of them the action taken was in conformity with the State statute fixing the rights and status of the corporation involved.

The only two decisions on the precise point here involved are those in the case at bar and in the *Vassar Foundry Company case,* 293 Fed. 248; 2 Fed. (2d) 240. The rule laid down the *Vassar Foundry Case* was not overruled by the *Thomas case,* 78 Fed. (2d) 602, or the *Capital Endowment Company case,* 86 Fed. (2d) 976, and there is no suggestion in the opinions in those cases to that effect. Nor did the decision in the *Vassar Foundry Company case,*

supra, turn on the solvency of the company. In the District Court (293 Fed. 248) the question was stated as follows (p. 249):

> "Under the undisputed facts, the meritorious question presented is whether, after the entry of a decree of dissolution of a Michigan corporation in voluntary dissolution proceedings regularly had under the applicable Michigan statutes, such corporation may, more than four months thereafter and on its own petition, be adjudicated a bankrupt under the Bankruptcy Act."

In the Court of Appeals (2 Fed. (2d) 240) the solvency of the corporation was only considered on the question of whether the Michigan statute under which the company was dissolved was an insolvency statute. The court pointed out (p. 240) that if the Company had alleged insolvency as a cause for dissolution under the State statute, that might have been an act of bankruptcy which would have permitted its adjudication as a bankrupt.

D. The Rights of Respondent as a Dissolved Corporation Under the Law of Illinois.

At pages 28 to 32 of its brief, respondent argues that it had a qualified existence under the Illinois statute subsequent to its dissolution by decree of the Illinois court, and apparently concludes that this qualified existence authorized it to file the petition here involved. This subject was dealt with at pages 10 to 20 of our main brief. Respondent refers to the *Hutchinson* case, 176 Ill. 48, and to the *Facett* case, 102 Ill. 315, but concedes (page 29) that these cases were decided under an Illinois statute antedating that under which respondent was dissolved. As we pointed out in our main brief (pages 17, 18) the State statute then in effect did not limit to two years the time in which suits could be brought against a dissolved Illinois corporation, and the decisions therefore permitted no more than was permitted by statute.

In the *Mallers* case, 242 Ill. 50, the action as stated by the court at page 53, was commenced while the corporation was a going corporation, and for this reason the court held that it should be permitted to prosecute its suit to final judgment. Such action was not inconsistent with the then existing statute. Nor as a matter of fact would it be inconsistent with the present statute, for it is conceded that respondent now has the right to continue its defense of the foreclosure suits pending in the state court.

In the *Perry* case, 279 Ill. App. 195 (page 31, respondent's brief) the only question was of the right of an Ohio corporation to sue or be sued in Illinois subsequent to its dissolution. The court only held that the rights of the corporation should be determined by the law of the state of its creation, and that since the Ohio law fixed no time limit within which a dissolved Ohio corporation could sue or be sued, that rule would be applied in Illinois. In the *Griggsville State Bank* case, 275 Ill. App. 11 (page 31, respondent's brief) it did not appear that the time in which the dissolved corporation could sue or be sued under Illinois law had expired. All the court held was (page 15) that the suggestion of a corporation's dissolution did not raise a presumption that the time in which it could be sued had expired. The decision in the *American Bank & Trust Co.* case, 48 Fed. 2d 588, did no more than apply the rule laid down in the cases to which reference has been made.

Respondent's theory apparently is that although the Illinois statute fixing the rights of respondent subsequent to dissolution was plain and explicit, there should nevertheless be grafted on to the statute additional language authorizing respondent to take the action undertaken in this case. This cannot be done, as the statute is plain in providing that dissolved corporations shall continue their corporate capacity for two years only, for the sole purpose

of collecting their debts and selling and conveying their property and effects. It is conceded by respondent (p. 32, respondent's brief) that it had only a qualified existence under Illinois law, but it is said that a public policy has been adopted which permits corporations to continue their existence after dissolution for the purpose of winding up their affairs, satisfying creditors and distributing assets.

But the public policy of the State of Illinois is set out in the statutes enacted by its General Assembly. In this case, the applicable statute is plain and requires no construction; and all decisions which have been made under it and previous statutes dealing with the same subject, do no more than apply the law as written. Under these circumstances, it is not necessary to go beyond the statute to determine the public policy of the state.

In connection with its argument on this point, respondent says at page 31 of its brief:

> "The petitioner claims that its rights and respondent's rights in the instant suit are not reciprocal. The petitioner agrees that creditors could file an involuntary petition against the respondent, but denies the right of the respondent to file such an involuntary petition."

This is an incorrect statement of petitioner's position. During the two years next following respondent's dissolution, the rights of respondent and petitioner were reciprocal. During that time the mortgage foreclosure suits were started, and during that time respondent probably had a corporate right to file a petition under Section 77B of the Bankruptcy Act. But respondent filed no such petition. Lack of reciprocity does not result from a failure to extend to respondent an unlimited never-ending right to file such a petition when such rights as petitioner has asserted and now asserts were first asserted in strict compliance with that statute. Also, petitioner does not admit

that creditors of respondent could now file an involuntary petition against it, or that they could ever have done so at any time after the expiration of the two years following respondent's dissolution. It is unnecessary, however, to argue this proposition, as no such petition was filed by creditors of respondent at any time.

E. *The Status of Petitioner.*

Respondent claims, at pages 33 and 34 of its brief, that petitioner had no standing to challenge the jurisdiction of the District Court, on the ground that Section 77B (a) of the Bankruptcy Act limits that right to three or more creditors. The claim is without merit. Section 77B (a) does give three or more creditors of the debtor the right to "appear and controvert the facts alleged in the petition or answer;" but that sub-section does not purport to deprive the court of the power to hear any interested persons on such issues as may be presented, and particularly on an issue raised as to its own jurisdiction. No objection was made by respondent in the District Court to the right of petitioner to challenge the court's jurisdiction, and no motion was made in the Circuit Court of Appeals to dismiss the appeals. It is now too late to raise the question.

But, independently of this consideration, the jurisdictional issue was appropriately raised by petitioner. Petitioner did not file a petition for leave to intervene, as was done in *In re* 1030 *North Dearborn Building Corp.*, 7 Fed. Supp. 896, cited by respondent (p. 33 respondent's brief). On the contrary, petitioner was brought into the bankruptcy court by a formal notice, served upon its counsel by counsel for respondent (R. 6), that respondent would ask that court to approve its petition for reorganization, to issue its order restraining further prosecution of the

State court foreclosure suit, and to appoint the debtor to take possession of the property then in the custody of the State court through its receiver appointed in the mortgage foreclosure proceedings.

Petitioner appeared in response to this notice, and the court entered an order directing all parties in interest to answer the petition of respondent for reorganization and referred the matter to a Special Master (R. 9) on the petition and answers. Pursuant to this order, petitioner filed its answer, in which it denied that respondent was a corporation or that the petition was filed in good faith, and set up the dissolution of respondent under State statute in 1931 (R. 9, 13). It was on the issues thus raised that the Special Master took evidence and made his report to the District Court (R. 70-75), and that court entered the orders appealed from. No point is raised by respondent as to the appealability of these orders, and in view of the allowance of the appeals by both the District Court and the Court of Appeals, no such question could be raised.

Petitioner, through the receiver in the State court proceedings, was in possession of the premises and was entitled to remain in possession as the owner thereof, and to prosecute its foreclosure proceedings. *Rohrer* v. *Deatherage,* 336 Ill. 450, 455; *Duparquet* v. *Evans,* 297 U. S. 216. It was the duty of petitioner to protect and preserve these rights for the benefit of the bondholders. In the performance of this duty, petitioner denied the authority of the District Court to interfere with these rights by taking possession of the premises through its trustee and by restraining the prosecution of the foreclosure proceedings.

If the District Court was without jurisdiction to make and enter the decrees complained of, as we contend it was, the injury to petitioner is obvious, and this injury conferred upon it the right of appeal. *Pianta* v. *H. M. Reich*

Co., 77 F. (2d) 888, (C. C. A. 2d Cir.); *In Re Roche*, 101 Fed. 956 (C. C. A. 5th Cir.); *Humphrey* v. *Bankers Mortgage Co.*, 79 F. (2d) 345, (C. C. A. 10th Cir.). On this point see also *Continental Bank* v. *Rock Island Railway*, 294 U. S. 648; *Harrison* v. *Chamberlain*, 271 U. S. 191; *Harris* v. *First National Bank*, 216 U. S. 382; *McGonigle* v. *Foutch*, 51 F. (2d) 455.

The question of the power of a court to exercise control over persons and property is fundamental and may be raised at any time, and if not raised by the parties should and will be raised by the court itself. *M. C. & L. M. Railway Co.* v. *Swan*, 111 U. S. 379; *Morris* v. *Gilmer*, 129 U. S. 315; *Defiance Water Co.* v. *Defiance*, 191 U. S. 184; *In Re Garneau*, 127 Fed. 677; *In Re Ettinger*, 76 Fed. (2d) 741 (C .C. A. 2nd Cir.). Decrees of a court acting without jurisdiction can be attacked collaterally, *Vollely* v. *Northern Fire Ins. Co.*, 254 U. S. 348; *Thompson* v. *Whitman*, 18 Wall 457; *German Savings Society* v. *Dormitzer*, 192 U. S. 125; *National Exchange Bank* v. *Wiley*, 195 U. S. 257; and it would be a strange doctrine if a person adversely affected cannot attack such a decree by direct proceedings.

There is no merit in the contention that petitioner is not a creditor. Petitioner is entitled to compensation for its services and the services of its attorneys in the institution and prosecution of foreclosure proceedings, as well as reimbursement for its expenses and costs of suit (R. 5, 14, 15). Under Section 77B (b) of the Bankruptcy Act which defines creditors as "including all holders of claims of whatever character against the debtor or its property", petitioner is a creditor of the respondent.

F. *Did Respondent have a Property Interest Capable of Reorganization in Bankruptcy?*

The argument presented on this point by respondent, at pages 35 to 39 of its brief, proceeds upon the assumption that respondent had corporate capacity to acquire the Master's certificate issued in the mechanics lien proceeding. As we pointed out at pages 35 to 40 of our brief, respondent did not have this capacity after the expiration of two years following its dissolution.

In the *Argyle Lake Shore Building Corporation Case,* 74 Fed. (2d) 491, it was conceded that a corporate right of redemption existed after the sale of the property for taxes. In the case at bar, however, the certificate in the mechanics lien proceeding was issued on August 5, 1931. Respondent's right of redemption therefrom expired twelve months thereafter, or on August 5, 1932 (see Appendix, pp. 41, 42, our main brief). Consequently, at the time respondent assumed to purchase the certificate, the period within which there could be any redemption thereof had expired. Upon analogous facts, the Court of Appeals for the Seventh Circuit in *In re Lowmon,* 79 Fed. (2d) 887, held that the expiration of a redemption period extinguished all property rights.

It is true that if it be assumed respondent had the corporate power to make this purchase, it would then have had a statutory right of redemption under any decree entered in the foreclosure proceedings pending in the State court, and this right of redemption might constitute property susceptible of reorganization under the Bankruptcy Act. If, however, respondent had no corporate capacity to purchase the Master's certificate issued in the mechanics lien proceeding, a deed issued under that certificate would have terminated all of respondent's interest in the

property. Any right of redemption under a decree in the mortgage foreclosure cases would have passed to the stockholders of respondent.

The argument of respondent on this point thus assumes in respondent a power of corporate action, which, as we have shown, did not exist under the law of Illinois. Unless that power is shown to exist, the argument of respondent on this point fails completely.

Conclusion.

We submit that respondent has supplied nothing to this Court justifying an affirmance of the decision of the Court of Appeals. No argument or authority has been furnished justifying the action taken by the District Court, the necessary effect of which action is to deprive petitioner and the security holders represented by it of their rights, and to deprive the State of Illinois of authority to deal with and control corporations of its own creation. We submit that there is nothing in the law justifying these results and that the judgment of the lower court should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

Nos. ~~865~~ [redacted] 23-24

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Debtor.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT No. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Respondent.

Answer and Brief in Opposition to Petition for Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

Nos. 865-866.

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Debtor.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Respondent.

Answer and Brief in Opposition to Petition for Writ of Certiorari.

STATEMENT OF FACTS.

As a correction of the statement of facts of petitioner, we wish to call the Court's attention to the statement made on page 5 of said petition, wherein it is alleged that the present Stockholders acquired the Stock shortly before the filing of the Petition under Section 77B. This Statement is not true. The Stock of the Corporation was always

owned and held by the Schulman family. The only transfer that was made was the transfer of the father's Stock to the Daughter, to secure a Loan that she made to him; that the Stock represented an investment of $30,000.00 to $35,000.00 (Rec. 18-24).

I.

The State Courts have held that a corporation dissolved for failure to pay franchise tax, may continue to live for the purpose of being liquidated.

In Petitioner's first point of its argument, it questions the right of a dissolved Corporation to file its Petition for Corporate Reorganization under Section 77B of the Bankruptcy Act, after the expiration of the period provided by the Laws of its creation for the winding up of its affairs.

That a Corporation may continue to live, though dissolved, for the purpose of being liquidated, has been recognized by the Supreme Court of the State of Illinois.

In the case of *Life Association of America* v. *Fassett*, 102 Ill. 314, the Court there held:

At Page 323:

> "With a view of mitigating the rigor of the Common Law with respect to the effects of a defunct Corporation, the Legislature of this and most, if not all, of the other States of the Union, have, by appropriate Legislative enactment, provided for a just and equitable distribution of their assets in insolvency, or the sudden dissolution from any cause * * *"

At Page 324:

> "From these and other provisions of the Statute, it clearly appears that it is part of the settled policy of the State, at least so far as the Domestic Corporations are concerned, that upon their dissolution, how-

ever they may be effected, they shall, nevertheless, be regarded as still existing for the purpose of settling up their affairs and having their property applied for the payment of their debts * * *."

At Page 325:

"Whatever may be the effect of a Decree of dissolution in the State creating the corporation, it may, nevertheless, be regarded as at least a *de facto* corporation here, for the purpose of enabling creditors to reach its effects in this State."

II.

Pending litigation may keep a corporation alive, though same may have been dissolved, as long as that litigation remains pending.

In the case of *Singer and Talcott Co.* v. *Hutchinson*, 176 Ill. 48, the Supreme Court of the State of Illinois held that a Corporation, though dissolved for a period of more than two (2) years after the entry of the Decree of Dissolution, may still continue its existence, so that a Writ of Error to the Supreme Court of the State of Illinois could be brought for the purpose of reversing a Judgment rendered against it, the Court holding:

"* * * This Corporation was kept alive for the purpose of being made a party to the original action, and, being so alive for such purpose, is preserved by the Practice Act with authority to prosecute an Appeal or Writ of Error."

It will be noted that a Writ of Error is a new and separate suit, and is brought independent of the original action. Thus, the Supreme Court of the State of Illinois itself recognizes the existence of a Corporation, and treats with same as a Corporation though dissolved by Decree, and though two years had elapsed since its dissolution.

III.

Under the Constitution, and pursuant to the Acts of Congress, the Bankruptcy Courts have exclusive and paramount jurisdiction of the estate of insolvent debtors, and nothing done by State Courts may curtail, limit, impede or defeat that jurisdiction.

In re: *Williams* v. *Watts*, 190 U. S. 1, at 26 and 27:

> "* * * and the operation of the Bankruptcy Laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under State Statutes. The Bankruptcy Law is paramount and the jurisdiction of the Federal Courts in bankruptcy when properly invoked, in the administration of the affairs of insolvent persons and corporations, is essentially exclusive."

In the case of *Cresson & Clearfield Coal & Coke Co.* v. *Stauffer*, 148 Fed. 981, the court held:

> "It has often been held that, even where a charter expires by time, its existence will be considered as being extended for the purpose of winding up its affairs, securing creditors and satisfying the ends of justice, even without special statutory authority for that purpose, and we think that the paramount authority of the Federal Bankruptcy Law is sufficient to keep alive the Corporation in this case for the purpose of the Bankrupt jurisdiction created by the said act, and to give efficacy to the admission made by the directors of the insolvent corporation as an act of Bankruptcy."

In the case of *Stark Lumber Co.*, 114 Fed. 360, the Court held, at Page 361:

> "The question raised by this motion to quash is not clear of difficulty, but it seems that it must be solved

by applying the broad principle that the National Bankruptcy Law is to govern the administration of the Estate of all insolvent debtors who are within its provisions and supersedes all the State Laws having the like object, when its provisions are invoked by the requisite creditors, and acts of Bankruptcy are proven."

In the case of *Hammond, et al.* v. *Lyon Realty Co.*, 59 Fed. (2nd) 592, No. 3290, 4th Circuit, June 13, 1932, at Page 593:

"* * * And it would certainly be contrary to the spirit of the National Bankruptcy Act to hold that insolvent corporations are excluded, by dissolution, from the scope of its provisions, and that the distribution of their assets and the final settlement of their affairs must be left to the State Courts."

At Page 895:

"There was no lack of power in Congress, and there can be no question as to its intent by the use of the term 'corporation' in Section 4B to include not only corporations in the literal sense, but also those bodies, which having once been true corporations, might be dissolved after insolvency by the State Courts. * * * The conclusion is irresistible that Congress did not intend to leave the affairs of dissolved corporations to the State Courts, but intended to include them within the terms of Section 4B."

Counsel for Petitioner, in their Brief, page 16, state:

"*Recognition of the legal extinction of the respondent under the Law of Illinois would not defeat the jurisdiction of the Federal Courts to administer the affairs of an insolvent Corporation, as the Circuit Court of Appeals holds.* The Law of Illinois provided a rea-

sonable period (two years) for winding up the affairs of a defunct corporation and during that time respondent (or its creditors) could have applied to the Bankruptcy Court of relief." (Italics ours.)

Thus, counsel concede the proposition that the mere dissolution of the Corporation would not preclude it from filing a Petition to have its assets administered in the Bankruptcy Court, but contend that same must be done within the limitation of time fixed by the State Legislature.

If that were to be held the Law, what control would the Bankruptcy Courts have as to the time limit fixed by the State Legislature? What could prevent the State Legislature from reducing the two year period to one (1) year, six (6) months or one (1) day.

This, in fact was done, for in the present Corporation Act of the State of Illinois, passed by the State Legislature in 1933, no time is allowed a dissolved corporation from instituting any action at all. Only creditors are allowed two (2) years to institute action against the Corporation. 1935 Illinois Revised Statutes, Chapter 32, Section 94.

"The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by the decree of the Court of equity when the court has not liquidated the assets and business of the corporation, or (3) by expiration of its period of duration, shall not take away or impair any remedy given *against* such corporation, its directors, or shareholders, for any liability incurred prior to such dissolution if suit therein is brought and service of process had within two (2) years after the date of such dissolution. Such suits may be prosecuted against and defended by the corporation in its corporate name." (Italics ours.)

IV.

The Illinois Statute, fixing a two (2) year limitation upon dissolved corporations to wind up their affairs and liquidate their assets, curtails and limits the powers and jurisdiction of the Bankruptcy Courts.

In the case of *311 E. Delaware Place Building Corporation,* 76 Federal (2nd) 834, the Court held:

"Passing without comment the petition of the Receiver in failing to protect the corporation for which he was in part acting and assuming as between the State and the said corporation, the latter was not *in esse,* it by no means follows the Bondholders could not treaf the corporation as an entity, subject to the adjudication under the Bankruptcy Act, or under Sections 77A and 77B of said Act.

That corporation, thus dissolved, exists for certain purposes, Smith & Hurd Revised Statute, Ill., 1931, Chap. 32, Secs. 14 and 79, Cahill's Revised Statutes, Illinois, 1931; Chap. 32, Secs. 14 and 79, one of which is to have its estate administered in a Court of Bankruptcy, is the holding of the courts that have passed on this question.

Hammond, et al. v. *Lyon Realty Co.,* (C. C. A.) 59 Fed. (2nd) 592; *In re Double Star Brick Company,* (D. C.) 210 Fed. 980; *In re Munger Vehicle Tire Company,* (C. C. A.) 159 Fed. 910; *In re Stork Lumber Co.,* (C. D.) 114 Fed. 360. • • •

It is not necessary to invoke the equities which exist in such cases, to reinforce the reasons for the adoption of the rule announced in the above cited cases, to the effect that the dissolution of the corporation, through forfeiture of the charter, because of failure to pay taxes, does not deprive the United States Dis-

trict Court of jurisdiction to administer the estate of such corporations in accordance with the Bankruptcy Act."

In the instant case, from the Opinion of Judge Lindly, the Court stated (R. 111) 86 Fed. (2nd) 667:

"Remembering that under the Constitution, the national government, through its judiciary, pursuant to acts of Congress, has exclusive and paramount jurisdiction of the estates of insolvent persons, it follows that nothing done by a state court may curtail, limit, impede or defeat that jurisdiction. Jurisdiction in bankruptcy under the federal constitution comes into existence, we take it, simultaneously with the coming into existence of insolvency of the Debtor."

V.

No conflict exists between the 6th Circuit and 7th Circuit by virtue of the decision by the District Court in the instant case.

The only point of Law determined by the lower Court in the instant case was that the two (2) year period within which a Corporation may wind up its affairs and liquidate its assets, as provided by the State Statute, (Illinois Smith & Hurd's Revised Statute, 1931, Chap. 32, Secs. 14 and 79) would not be binding on the Bankruptcy Courts, so as to deprive the Bankruptcy Courts from taking jurisdiction of the Debtor's assets, although said corporation had been dissolved for a period of more than two (2) years prior to the filing of the Petition. Petitioner urges that this decision is in conflict with the decision rendered by the 6th Circuit, in the case of *Vassar Foundry Company* v. *Whiting Corporation*, 2 Fed. (2nd) 240.

This case is clearly not in conflict with the decision in the case at bar. In that case, the Directors of the Vassar Foundry Company, then being solvent, elected to and did file a voluntary petition for dissolution of their Corporation. Thereafter a Receiver was appointed by the State Court, who took possession of all Debtor's assets, for the purpose of liquidating these assets in accordance with the Law of that State. The Stockholders and Directors abandoned completely any semblance of a corporate entity. Then, after accomplishing this liquidation, an attempt was made to file a voluntary petition in Bankruptcy, as a corporation, which Petition was denied, not because it was a dissolved corporation, but merely because there was nothing of which the Court could take jurisdiction, the Court there holding, Page 241:

> "This conclusion does not leave an open door for insolvent Michigan Corporations to escape Bankruptcy, such dissolution action, as was had, taken, if by a corporation then insolvent, within the Bankruptcy Act definition, would seem to be an act of Bankruptcy."

In a recent case, *Capital Endowment Co.* v. *Kroeger*, 86 Fed. (2nd) 976, the 6th Circuit had occasion to pass on the very question involved here. In this case the Attorney General of the State of Ohio instituted *quo warranto* proceedings to oust the Capital Endowment Company from its corporate franchise, and a decree was entered dissolving the corporation. Thereafter the corporation filed its voluntary Petition for reorganization under Section 77B of the Bankruptcy Act.

Kroeger questioned the right of the corporation to file a Voluntary Petition after it was dissolved. The Court held:

> "The order of ouster entered against the Debtor in the *quo warranto* proceedings by the Ohio Supreme

Court cannot defeat the jurisdiction of the Bankruptcy Court over the assets of the corporation. *Austin* v. *Thomas,* 78 F. (2d) 602 (C. C. A. 6); *Hammond* v. *Lyon Realty Co.,* 59 F. (2d) 592 (C. C. A. 4)."

The sixth district also affirmed this principal in the case of *Austin* v. *Thomas,* 78 Fed. 602.

The conflict of authority that counsel for petitioner contended that existed between the 6th and 7th Circuit has been disposed of clearly and definitely by the 6th Circuit itself, wherein the 6th Circuit held that the dissolution of the Corporation would not bar the Bankruptcy Court from taking jurisdiction on a Voluntary Petition.

VI.

The question of whether a corporation has any assets for the purpose of liquidation or reorganization under Section 77B of the Bankruptcy Act is one of fact and not of law, and is determined on the hearing as to whether the petition is filed in good faith.

The Petition states that the Debtor is without assets and therefore the Federal Court has no right to take jurisdiction of this Corporation.

Counsel for petitioner contends that the Corporation has a mere naked title to its Real Estate, from which it is liable to be divested, by vitrue of Master's Certificates which have been issued on two Mechanic Lien Foreclosure cases.

We contend that where no Master's Deeds have issued on the Certificates of Sale, that Title to Debtor's property is still in the Debtor, subject at any time to the right of the holder of said Certificates of Sale to have Deeds

issued, and if this right is not exercised within five (5) years after the issuance of said Certificates of Sale that said Certificates become void and of no effect. (1935 Illinois Revised Statutes, C. 77, S. 31.)

Title to the property has always been in the Corporation. It was never divested of it. The assignment of the Certificates to the Debtor Corporation constituted merely a merger of interests in the real property and a cancellation of the lesser interest, which are the Certificates of Sale. Since these Certificates have been cancelled, the question as to what effect they could have on the title and assets of the Debtor Corporation, is a moot one. These Certificates are no longer in existence, and all rights under them have been terminated, and therefore the Corporation is now the absolute owner of the title to its real estate.

The question of assets is one of fact and not of Law, and this question was heard before the Master to whom the cause was referred, as to whether the Petition was filed in good faith. The Master heard all of the evidence pertaining to the question of the good faith in the filing of this Petition and recommended to the Court that an Order be entered declaring that the Petition was filed in good faith (Rec. 70). This recommendation of the Master was again reviewed by the lower Court, and the question of assets of the Corporation was again passed on by the lower Court, and the Court again found that the Petition was properly filed and in good faith (Rec. 79). This same question was again reviewed in the Circuit Court of Appeals, and the same questions were raised and again the Circuit Court of Appeals passed on the question and in its opinion stated (Rec. 112):

> "Appellant complains of the finding that the Petition was filed in good faith. The court overruled the

exceptions to the findings and approved the Master's report, and we cannot see, upon examination of the Record, that the facts did not exist justifying the action of the court."

In the case of *Central Funding Corporation,* 75 Fed. (2nd) 256, at Page 261, the Court stated:

"It makes no difference whether the Debtor has an equity of any value or not, or whether his business is to continue for five or ten years, or indefinitely. The most frequent occasion for a reorganization is where only creditors' rights are to be adjusted and liquidation is to be slow enough to take advantage of market conditions obtaining over a long period.

Section 77B expressly provides for such situations as we have here, and they are proper subjects for Bankruptcy legislation. To restrict the Act of reorganizations where the Debtor has an equity, would be to deprive the section of much, if not most of its usefulness."

It has often been held by this Court that where two Courts concur, unless clear error is shown, this Court will accept its finding.

Pick Manufacturing Company v. *General Motors Corporation,* 57 Supreme Court Reporter, 1, 2 and cases therein cited.

In the instant case both the lower Court and the Circuit Court of Appeals held that the Petition in the instant case was filed in good faith, and that it had assets and property that could be reorganized in these proceedings.

Counsel in their Petition cite numerous cases on the effect of the dissolution of a Corporation by State Decree, but none of the authorities cited by counsel pertains to the right of the Bankruptcy Court to assert its jurisdic-

tion over the assets of a dissolved corporation, and therefore are not applicable to the facts involved herein.

Under Rule 38, and the cases therein cited for its exposition, it is clear that a Petition for Certiorari is not to be used merely as a device for affording "the defeated party in the Circuit Court of Appeals another hearing" (*Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163); rather it should be said it is properly invoked only to review "cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Court of Appeals" (*Layne & Bowler* v. *Western Well Works*, 261 U. S. 387, 392). The present case comes under neither head.

We therefore respectfully submit that no conflict of authorities exist and that the decision of the lower Court, and the opinion of the Circuit Court of Appeals, 7th Circuit, are in conformity with all of the authorities pertaining to the questions involved; that all of the matters set forth in the Petition have been completely heard and reviewed by the United States Circuit Court of Appeals; that the Petition discloses no ground for invoking the Writ of Certiorari and that the Petition herein should be denied.

Respectfully submitted,

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Counsel for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

Nos. 23 and 24

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

BRIEF FOR RESPONDENT.

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IN THE

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OCTOBER TERM, A. D. 1937.

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CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE, UNDER TRUST DEED RECORDED AS DOCUMENT No. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

The petitioner's statement of the case (Brief, pp. 3-7) sets forth all the necessary facts with the following exceptions.

The petitioner's statement of the case does not disclose that within the time allowed by the Illinois Statutes no deed was issued to ripen into title the Master's Certificate of Sale issued August 5, 1931 to the purchasers in the lien foreclosure suit. Nor does the petitioner's statement of

the case disclose that the Master's Certificate of Sale was subsequently surrendered to the respondent.

The findings of the Master in respect to the mechanics' lien suit filed against the debtor corporation conclude with the following statement:

> "That no deed ever issued through, or under, said Master's Certificate, and that said Master's Certificate was purchased and now is the property of the Debtor." (R. 72.)

SUMMARY OF ARGUMENT.

I. The District Court, sitting as a bankruptcy court, had jurisdiction to entertain and determine the voluntary petition of the respondent for reorganization under Sections 77A and 77B of the Bankruptcy Act, as amended.

A. The power of the Federal Government "on the subject of bankruptcies" is constitutionally paramount to state authority to annul corporate existence.

1. Congress is given, by the constitution, power to establish uniform laws on the subject of bankruptcies throughout the United States.

2. The bankruptcy law of the United States is as much the law in each state as it is a law of the United States.

3. The statute of Illinois giving creditors the right to assert claims against dissolved corporations within two years of dissolution is a statute of limitations which cannot impair, limit or impede the national bankruptcy laws.

4. When a corporation is dissolved its property still exists for distribution and its creditors and stockholders still have an interest therein.

5. Bankruptcy courts are courts of equity and as such deal with substance and not with form.

6. As a proceeding in *rem* a bankruptcy court controls the assets of a bankrupt, whether or not the corporation can continue to pursue the powers given it in its charter.

7. As an analogy, bankruptcy courts have jurisdiction over partnerships even after dissolution but before the final settlement thereof.

8. Until Congress fixes some other limitation, a dissolved corporation, otherwise subject to the bankruptcy laws, will continue so subject until its assets have been adjudged and distributed among those entitled to the corporation's property.

B. The policy of Sections 77A and 77B of the bankruptcy act is for the protection of stockholders as well as creditors. To effectuate this policy requires an affirmance of the decision of the Circuit Court of Appeals.

1. Prior to the enactment of Sections 77A and 77B, proceedings under the old bankruptcy laws were inadequate to afford relief to corporate debtors and their stockholders.

2. Sections 77A and 77B clearly indicate that one of their purposes is the relief of stockholders of a corporation as well as relief of creditors.

3. Being remedial legislation, the Bankruptcy Act and its amendments are entitled to liberal construction.

C. Decisions of other federal courts without exception permit to dissolved corporations or their creditors the coverage of the bankruptcy laws.

1. A reversal of the decision of the Circuit Court of Appeals would cause hardship and confusion because of the unanimity with which the federal courts have ruled as did the Circuit Court of Appeals in the instant case.

2. Cases cited show that no court has expressed dissent from the rule announced by the Circuit Court of Appeals in the instant case.

3. Such of the authorities cited as presented the issue upon the filing of an involuntary petition by creditors cannot be differentiated from the instant case in which the petition was a voluntary one.

4. Bankruptcy courts have equal authority and exclusive power whether the matter is brought by the debtor or by creditors.

5. The decision of the Circuit Court of Appeals for the Sixth Circuit in *Vassar Foundry Co.* v. *Whiting Corp.*, 2 F. (2) 240 is not in conflict with the universal rule. The corporation in that case alleged itself to be *solvent* and hence the operation of the state law was not inconsistent with the Bankruptcy Act.

6. If the decision in the Vassar case is an exception to the general rule, it has been overruled by the later decisions of the Circuit Court of Appeals for the Sixth Circuit in *In Re Thomas*, 78 F. (2) 602, and in *Capital Endowment Co.* v. *Kroeger*, 86 F. (2) 976.

7. The case of *In re National Surety Co.*, 7 F. Supp. 959, presents no exception to the uniformly announced rule because it deals with an insurance company not subject to bankruptcy laws.

8. The dictum of Judge Evans in *In re 211 East Delaware Place Building Corporation*, 14 F. Supp. 96 to the effect that a different rule *may* obtain upon the filing of a voluntary petition is not the law of the Seventh Circuit.

II. The respondent corporation, even after the decree of dissolution, had a qualified existence under the Illinois Law.

A. Under the authorities of the state courts of Illinois, a public policy has been adopted giving dissolved corporations a continuing qualified existence to wind up their affairs and distribute their assets.

B. Under such policy corporations, even after dissolution and even after the running of the statute of limitations, may file writs of error, which under the Illinois practice, is the beginning of a new suit.

C. The Circuit Court of Appeals for the Seventh Circuit has determined that it is the public policy of Illinois that corporations upon their dissolution shall nevertheless be regarded as still existing for the purpose of settling up their affairs and having their property applied for the payment of their just debts; and that the rights of creditors and the corporation in such cases are *reciprocal*.

III. The petitioner had no standing to appear and contest the jurisdiction of the bankruptcy court.

A. The petitioner is a trustee under trust deeds given to secure mortgage bonds, and as such is not a creditor entitling it to challenge the jurisdiction of the Court.

B. The petitioner was entitled to come into these proceedings only in subordination to and in recognition of the original proceeding.

IV. The corporation had property which could be the subject of reorganization under Section 77B of the Bankruptcy Act.

A. The Master found that no deed had issued on the certificates of sale at the foreclosure of mechanics' liens on the property of the respondent corporation. Hence the respondent corporation has never been divested of its property.

B. Even if it has been divested of its property, it has an equity of redemption which is sufficient under Section 77B.

ARGUMENT.

I.

THE DISTRICT COURT, SITTING AS A BANKRUPTCY COURT HAD JURISDICTION TO ENTERTAIN AND DETERMINE THE VOLUNTARY PETITION OF THE RESPONDENT FOR REORGANIZATION UNDER SECTIONS 77A AND 77B OF THE BANKRUPTCY ACT, AS AMENDED.

A.

The Power of the Federal Government "on the subject of bankruptcies" Is Constitutionally Paramount to State Authority to Annul Corporate Existence.

In their fundamentals the issues presented in this case revert to and are determined by the decision in *Sturges* v. *Crowninshield,* February term, 1819, 4 Wheaton 122. It was there contended that the several states could legislate on the subject of bankruptcy until Congress exercised the power conferred upon it by the Eighth Section of the First Article of the Constitution, viz.

> "The Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States".

On the other hand, it was contended that the grant of this power to Congress, without limitation, took it entirely from the several states.

The opinion of the Court, delivered by Chief Justice Marshall, declared,

> "Congress is not authorized merely to pass laws, the operation of which shall be uniform, but to *establish** uniform laws on the subject throughout the United States * * * the power granted to Congress may be exercised or declined, as the wisdom of that body shall

* Italics, the Court's.

> decide. If, in the opinion of Congress, uniform laws concerning bankruptcies ought not to be established, it does not follow that partial laws may not exist, or that State legislation on the subject must cease. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the States. It is not the right to establish these uniform laws, but their actual establishment, which is inconsistent with the partial acts of the States" (pp. 193, 195, 196).

This doctrine has been reaffirmed repeatedly, notably in *Stellwagen* v. *Clum,* 245 U. S. 605, 613; and in *In re Watts and Sachs,* 190 U. S. 1, 27. In the former it was said, page 613,

> "In view of this grant of authority to the Congress it has been settled from an early date that state laws, to the extent that they conflict with the laws of Congress enacted under its constitutional authority, on the subject of bankruptcies are suspended."

At the time of the decision in *Sturges* v. *Crowninshield* the conception of a bankruptcy law was one which discharged the debt of a trader in merchandise upon the petition of creditors (p. 194). The first national bankruptcy act (Act of April 4, 1800) was confined to persons "actually using the trade of merchandise" and provided only for involuntary bankruptcy. Subsequent national bankruptcy acts, for instance those of August 19, 1841 and of March 2, 1867, were held to be constitutional over the challenge that they extended to persons other than merchants and provided for voluntary proceedings. *Hanover National Bank* v. *Moyses,* 186 U. S. 181. By the Act of July 1, 1898 (30 Stat. at L. 544, Chap. 541, 11 U. S. C. A.) and the amendments of 1934 (48 Stat. at L. 912, 11 U. S. C. A. 207), Congress *established* further and more extended uniform laws on the subject throughout the United States.

Because of the decisions in *Sturges* v. *Crowninshield,* 4 Wheaton 122; *Ogden* v. *Saunders,* 12 Wheaton 213; *Stell-*

wagon v. *Clum*, 245 U. S. 605; and others, **the bankrupt law is as much the law in each state as it is a law of the United States.** *Conner* v. *Long*, 104 U. S. 228. In this case it was said, p. 240:

> "It (National Bankruptcy Act) is as truly the law of each State, as it is, and because it is, a law of the United States."

The authority of Congress being paramount over the subject of bankruptcy, no state legislature may attempt to determine, intentionally or otherwise, when the jurisdiction of the United States courts over insolvent or bankrupt corporations shall cease. Bankruptcy laws are concerned with the rights of creditors of distressed debtors, natural or artificial. Sections 77A and 77B are concerned likewise with stockholders of distressed corporations.

When the legislature of Illinois declared that the dissolution of Illinois corporations, when creditors were affected, should not impair the rights of those creditors within two years, it was enacting a statute of limitations within which the rights of such creditors should be asserted.

The statute, Smith-Hurd Rev. Stat. 1929, Act of 1919, reads:

> "SEC. 79. The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporations, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution."

What the effect of that statute is upon the courts of Illinois is the subject matter of Section II of this brief. The present section contends that such a statute in no wise impairs, limits, or impedes the courts of the United States in their administration of the national bankruptcy laws.

Similar statutes are in effect in most, if not all, of the states. Their terms and times vary however. It would ap-

pear to be one of the absurdities and confusions which the bankruptcy act seeks to avoid that a Federal court may adjudicate in bankruptcy a corporation of Illinois within a two year period after dissolution, but a corporation of Minnesota*, for example, within a three year period.

Further the present Illinois statute, Business Corporations Act of 1933**, Illinois Revised Statutes, 1937, Chap. 32, Secs. 91 and 94, allows an Illinois corporation no stay of execution after dissolution for winding up its affairs and distributing its assets to those entitled thereto, as did Section 14 of Illinois Revised Statutes, 1929, Chap. 32, the statute under which the respondent suffered a decree of dissolution. As the petitioner's argument is understood, the U. S. District Court in Chicago would be ousted of jurisdiction to adjudicate a corporation a bankrupt upon its voluntary petition in bankruptcy if, during the pendency of such proceeding, a state court in Illinois were to decree under the statute of 1933 that such corporation was dissolved. The petitioner's argument leads inevitably to this absurdity.

When a decree of dissolution is entered by a court of the state creating a corporation, or when the charter of a corporation expires, the property of that corporation does not evaporate. Its real estate does not escheat to the state. Its bank account does not belong to the bank of deposit. Its assets belong to its creditors and its stockholders, as their interests may appear. This is true whether the corporation be solvent or bankrupt. The present bankruptcy laws are designed to aid both the creditors and the stockholders of a distressed corporation. As an artificial entity that corporation may be extinct, but its creditors, its stockholders, and its assets are not interred with the corpse. The assets remain for distribution.

---

* Mason's Minnesota Statutes, 1927, Chap. 58, Sec. 7485.

** Cited in Appendix.

Bankruptcy courts are essentially courts of equity. Their proceedings, except where the act specifies otherwise, are inherently proceedings in equity. *Local Loan Co.* v. *Hunt,* 292 U. S. 234. A proceeding in bankruptcy is not a mere personal action, but is in the nature of a proceeding *in rem. Ibid.* Courts of equity deal with substance and not with form.

As a proceeding *in rem* the bankruptcy court controls the assets. As a proceeding in equity, it has jurisdiction of the debtor and the duty of adjudging claims. These obligations are in no manner impaired by the fact, if it be the fact, that the corporation can no longer pursue the powers given it in its charter.

Looking at substance and not at form, aiming at the practical and not the fictitious, the bankruptcy act provides, Sec. 5a, 11 U. S. C. A. 23a, that a partnership during its continuation of partnership business, or *after dissolution and before the final settlement thereof* may be adjudged a bankrupt as a distinct legal entity. *Liberty National Bank* v. *Bear,* 276 U. S. 215. *Meek* v. *Centre County Banking Co.,* 268 U. S. 426. *In re Double Star Brick Co.,* 210 F. 980, wherein the court said in holding that it had jurisdiction of a dissolved corporation, pp. 981, 982, that

> "the primary purpose of a bankruptcy proceeding is the distribution of the property of the debtor; the court takes hold of the *res* rather than the person."

And at page 982, the court said:

> "Perhaps still a better analogy to the present case is that of a partnership. It is familiar knowledge that under the Bankruptcy Act a partnership is deemed to be quite as much a legal entity as a corporation; the partnership estate is treated as distinct from that of the individual members of the partnership, and is so administered. But if the theory here urged is to be accepted, by parity of reasoning it must be held that a partnership may become insolvent and commit acts of

> bankruptcy, and thereupon the jurisdiction of the bankruptcy court may be defeated by the dissolution of the partnership, either through the voluntary agreement of the partners, or by reason of the death of one of them."

The case of a dissolved corporation before distribution of its assets is an exact analogy. Section 77B provides for the reorganization of the *res*. Its application should not be barred by the loss of corporate form. 35 Columbia Law Review 108 (1935).

The stockholders of a dissolved corporation are joint trustees of the corporate property until creditors' rights have expired or been discharged. A trust may reorganize under the provisions of Sec. 77B. In the instant matter, the *res* and the necessary parties are before the Court. A court of equity is not concerned with names if parties in interest are represented.

In the case of *In Re Mortgage Securities Corporation*, 75 F. (2) 261, 262, C. C. A. 2, the court said,

> "The debtor is itself made up of its shareholders, considered as a class, and just as they are bound together by their corporate form, so are the secured creditors by their common trust."

The power of Congress being supreme and paramount when exercised to establish uniform laws of bankruptcy, the limitation of Section 79 Illinois Revised Statutes 1929, Chap. 32,* requiring creditors to assert claims within two years of dissolution and the limitation of Section 14 Illinois Revised Statutes, 1929, Chap. 32,* requiring corporations whose powers have expired by limitation or otherwise to close business within two years, are subject to the exercise of the bankruptcy laws. Until Congress fixes some other limitation, a dissolved corporation, otherwise subject to the bankruptcy laws, will continue so subject (even though dissolved) until its assets have been adjudged and

* Appears in Appendix.

distributed among those entitled to the corporation's property. Any other rule permits each state to fix its limitation without regard to the power of Congress "to establish uniform laws on the subject of bankruptcies throughout the United States".

B.

The policy of Sections 77A and 77B of the bankruptcy act is for the protection of stockholders as well as creditors. To effectuate this policy requires an affirmance of the decision of the Circuit Court of Appeals.

Prior to the passage of the Act of June 7, 1934, Bankruptcy Act Sec. 77B, 11 U. S. C. A. 207, providing for corporate reorganization, proceedings under the old bankruptcy laws did not furnish adequate relief for distressed corporate debtors. Proceedings under the old bankruptcy laws were inadequate because no machinery existed to scale down secured debts without a sale of the security. Under such sales or under foreclosure sales there resulted, almost notoriously, a sacrifice of the property at an inadequate price. Usually a committee of bondholders bought in the property. The result was that dissenting bondholders and stockholders received nothing. Equity receiverships were inadequate for the same reason.

Only by the establishment of further uniform laws under the bankruptcy powers of Congress was adequate relief afforded. Equity receiverships went into discard. Building corporations petitioned the bankruptcy courts to enjoin foreclosure suits and for reorganization and rehabilitation.

The newly added sections 77A and 77B clearly indicate that one of their purposes is the relief of stockholders of the corporation as well as relief of creditors. For instance, under the express terms of 77B (k), 11 U. S. C. A. Sec. 207

(k), the provisions of Sec. 63 of the Act, 11 U. S. C. A. 103, dealing with the provability of claims is inapplicable in reorganization proceedings unless there is an order for liquidation.

When the history and purpose of the new bankruptcy legislation relating to reorganization are considered, the provisions ought to be given a liberal interpretation to accomplish the legislative intent. *In re Lake's Laundry,* 79 F. (2) 326 C. C. A. 2; *Continental Illinois National Bank and Trust Co.* v. *Chicago R. I. & P. Ry. Co.,* 294 U. S. 648.

Being remedial legislation, the Bankruptcy Act amendments are entitled to liberal construction under ancient rule.

The decision of the Circuit Court of Appeals effectuates the policy of Congress in that the stockholders of the corporate respondent are to have their day in court rather than to receive nothing at all without being heard.

C.

Decisions of other federal courts without exception permit to dissolved corporations or their creditors the coverage of the bankruptcy laws.

Because of the unanimity with which the principal issue in this case has been decided against the contentions of the petitioner, and because of the hardship and confusion which would result were this Court to change the rule; we feel justified in citing, in some number, but as briefly as possible, decisions supporting that of the Circuit Court of Appeals in the instant case.

1. *Capital Endowment Co.* v. *Kroeger,* 86 F. (2) 976, (C. C. A. 6, 1936, before Judges Hicks, Simons and Raymond. Opinion by Judge Simons.)

In June, 1935, the Ohio Supreme Court, upon an action in

quo warranto, ousted the debtor corporation from its corporate franchise. Following this proceeding, the corporation filed its voluntary petition for reorganization under Sec. 77B of the Bankruptcy Act. The petition was objected to on the ground that the corporation was not amenable to Sec. 77B for the reason that it had been ousted from its franchise. *Held*, the bankruptcy court had jurisdiction. At page 979, the court said:

> "The order of ouster entered against the debtor in the *quo warranto* proceedings by the Ohio Supreme Court cannot defeat the jurisdiction of the Bankruptcy Court over the assets of the corporation * * * *The fact that the debtor has been ousted from its corporate franchises in Ohio neither destroys its property nor its title* thereto. We cannot assume that any plan of reorganization approved in the Bankruptcy Court will fail to contemplate restoration of the debtor's corporate rights if that is possible, or failing, the organization of a new corporation to administer its assets for the benefit of creditors and shareholders. The organization of a successor corporation is not without the purview of reorganization plans under section 77B." (Italics supplied.)

The petitioner seeks to distinguish this case on the ground that the petitioning corporation had not been dissolved but had been ousted of its franchise. (Brief, p. 35.) This is not a real differentiation. It is merely the first grave digger's argument anent Ophelia's drowning as to whether the water comes to the man or the man goes to the water.

2. *Old Fort Improvement Co.* v. *Lea*, 89 F. (2) 286 (C. C. A. 4th, 1937). Before Parker, Northcott and Soper, Circuit Judges—Opinion by Judge Soper.

The question in this case was whether a South Carolina corporation was entitled in 1936 to file a voluntary petition in 77B when a receiver had been appointed for the corporation by a state court in 1927, the receivership still pending, and the charter of the corporation had been cancelled in

1934 for failure to pay certain license taxes. At the time of the petition, the corporation had land worth $20,000 and liabilities of $1,500, and it "could not meet its debts as they matured."

The State Court had entered an order that the property be sold and proceeds distributed, and it was the entry of this order which precipitated the filing of the 77B petition. The District Court dismissed the petition on the ground that the corporation was not such a corporate entity as was entitled to file under 77B. The Circuit Court of Appeals *reversed,* saying at p. 288 that:

> "The scope of section 77B is broader than was the act prior to the amendment, in that it covers not only corporations, which are insolvent, but also those which are merely unable to meet their maturing obligations; and the question arises whether the new section may be interpreted to apply to a dissolved corporation which is insolvent in either sense of the word. The question was decided in the affirmative, so far as an insolvent corporation is concerned, in the case of *In re 211 East Delaware Place Bldg. Corp.* (D. C.), 7 F. Supp. 892, affirmed on appeal (C. C. A.) 76 F. (2d) 834, where it was held that a petition to reorganize under section 77B might be filed by a corporation although a receiver for it had been appointed by the state court in a proceeding to foreclose a mortgage covering its entire property, and it had been subsequently dissolved by order of the state court for failure to pay its franchise tax. In the subsequent reorganization proceedings it was held, (D. C.) 14 F. Supp. 96, that notwithstanding the decision in *Duparquet, Huot & Moneuse Co.* v. *Evans, supra,* the bankruptcy court had jurisdiction under section 77B because the corporation was totally insolvent and all of its property had been put into the hands of a receiver in the state court. Proceedings for reorganization of dissolved corporations were also sustained in *Capital Endowment Co.* v. *Kroeger,* (C. C. A.) 86 F. (2d) 976, and *In re Forty-One Thirty-Six Wilcox Bldg. Corp.* (C. C. A.) 86 F. (2d) 667. See, also, Gerdes on Corporate Reorganization, vol. 1, § 54, pp. 167, 168; Remington on Bankruptcy (4th Ed.) 1936 Supp. § 100;

Tondel, Jr., Corporations Eligible for Relief under section 77B, 21 Minn. Law Review, 144, 159, January, 1937; Bird, Financial Associations under section 77B, 15 Texas Law Review, 65, 77, December, 1936. The only contrary holding, if it may be called such, is *In re National Surety Company* (D. C.) 7 F. Supp. 959, where it was held that an insurance company which had been dissolved so that its affairs were turned over for settlement to the Superintendent of Insurance of New York, who became vested with all of its property, was not subject for reorganization in the bankruptcy court upon the petition of its creditors. This case may be distinguished on the ground that the National Bankruptcy Act, 11 U. S. C. A. § 22, excludes insurance companies.

"We are in accord with these conclusions and are of opinion also that they are applicable to the reorganization under section 77B of dissolved corporations not totally insolvent but merely unable to meet their maturing obligations. . . .

. . . . . .

. . . (p. 290) it should be borne in mind that mere lapse of time after the appointment of an equity receiver by a state court will not oust the federal court of its jurisdiction to receive a petition for reorganization under section 77B."

The petitioner seeks to distinguish this case (Brief, p. 35) on the ground that the state statute continued the dissolved corporation until its affairs were closed. The legislature of South Carolina was aware of the national constitution and bankruptcy laws, and did not attempt by a statute of limitations to oust the federal courts from the administration of the property of distressed corporations.

3. *In re 211 East Delaware Place Bldg. Corp.*, 76 F. (2) 834, C. C. A. 7, 1935, before Evans, Sparks and Fitzhenry, Circuit Judges. Opinion by Judge Evans.

This case arose on the petition of three bondholders of the corporation who sought a reorganization under Sec. 77B of the Bankruptcy Act. The petition was filed after

foreclosure had been instituted and a state court receiver was appointed. The receiver was appointed on September 17, 1929, and on June 29, 1932, the state court entered a decree dissolving the corporation for failure to pay its franchise taxes. The petition under 77B was resisted on the ground that the corporation had been dissolved and the property passed to the stockholders, so that the debtor ceased to exist and was therefore not subject to the Bankruptcy Act. *Held*, the court had jurisdiction. At page 836, the court said:

> "• • • it by no means follows that the bondholders could not treat the corporation as an entity subject to adjudication under the Bankruptcy Act or under sections 77A and 77B of said act. That a corporation, thus dissolved, exists for certain purposes, Smith-Hurd Rev. St. Ill. 1931, c. 32, §§ 14, 79, Cahill's Rev. St. Ill. 1931, c. 32, pars. 14, 79, one of which is to have its estate administered in a court of bankruptcy is the holding of the courts that have passed on this question. *Hammond, et al.* v. *Lyon Realty Co.* (C. C. A.) 59 F. (2d) 592; *In re Double Star Brick Company* (D. C.) 210 F. 980; *In re Munger Vehicle Tire Company* (C. C. A.), 159 F. 901; *In re Storck Lumber Company* (D. C.), 114 F. 360."

4. *In re Surf Bldg Corp.*, 11 Fed. Supp. 295, D. C., E. D., Ill. 1934, Opinion by Judge Lindley.

This case arose on the petition of creditors of the corporation who filed an involuntary petition under Sec 77B. A foreclosure action against the corporation had been pending in the state court for over three years. The corporation had forfeited its charter for non payment of franchise taxes; it had executed a conveyance to nominees of the bondholders' committee; and the decree in the foreclosure had been entered by the time this case arose, but there had not yet been a sale. The court held that the loss of the corporation's charter was no bar to the petition under 77B, saying at page 297:

"Nor is the fact that the corporation has lost its

charter any bar to the jurisdiction of this court. In the recent case of *In re 211 East Delaware Place Building Corporation, a corporation*, 7 F. Supp. 892, this court pointed out that to hold that the loss of franchise for non payment of taxes deprives the federal court of jurisdiction would be to deprive the United States court of its constitutional jurisdiction to liquidate, administer, marshall, and distribute in bankruptcy, assets of any debtor."

5. *Hammond* v. *Lyon Realty Co.*, 59 F. (2) 592, C. C. A. 4, 1932. Before Parker and Soper, Circuit Judges, and Way, District Judge. Opinion by Judge Soper.

The sole question in this case was whether the dissolution of an insolvent corporation by a state court deprives the federal court of jurisdiction in bankruptcy proceedings subsequently instituted. On November 4, 1931, a creditors' petition in bankruptcy was filed alleging among other things, that state court receivers had been appointed in a foreclosure action. The receivers objected to the bankruptcy petition on the ground that the state court had on October 1, 1931, dissolved the corporation and that it therefore was not an existing corporation. The Maryland statutes do not have a provision extending the life of a corporation, after dissolution, for *any* purpose. The statutes do provide that in the dissolution decree a receiver shall be appointed to take the property of the corporation. The court held that the bankruptcy court had jurisdiction, saying at page 593 that:

"* * * it would certainly be contrary to the spirit of the National Bankruptcy Act to hold that insolvent corporations are excluded, by dissolution, from the scope of its provisions, and that the distribution of their assets and the final settlement of their affairs must be left to the state courts. * * *

(p. 594) "It has been uniformly held, in accordance with these principles, that the dissolution of an insolvent corporation does not put it outside the jurisdiction of the federal court in bankruptcy. It was decided

by Judge Morris of the District Court of Maryland, in *Re Storck Lumber Co.*, 114 F. 360, that the Maryland statute then in force providing for the dissolution of an insolvent corporation, the setting aside of unlawful preferences, and the distribution of its assets among the creditors, was in the nature of an insolvent law, and, as such, was superseded by *the application of the broad principle that bankruptcy law is to govern the administration of the estates of all insolvent debtors.* Similar views have been expressed as to the effect of similar state statutes by courts and text-writers both before and after the decision of *In re Storck Company, supra,* and there has been no dissent.

"The appellants would distinguish this array of authority by pointing out that in most, if not all, of the cases, the corporation had not been completely or validly dissolved when the adjudication took place, or at least that the dissolution was decreed after the proceedings in bankruptcy in the federal court had been instituted. It is said that no court has ever held that a corporation, finally dissolved under a state statute which contains no provision for the continuance of the life of the corporation during the settlement of its affairs, is within the purview of section 4b of the National Bankruptcy Act. It is not clear that so sweeping a statement is correct; and, in any event, it is evident that the decisions were not based merely on the ground that the corporate life had not completely ceased, but on the broader ground that *neither the legislature nor the courts of a state can take action which restricts the scope of the national bankruptcy system.* It has rather been the view of the courts that *the National Bankruptcy Act so far controls the dissolution of an insolvent corporation as to prevent its legal extinction by superseding, at least temporarily and to the extent necessary, all state laws which would prevent the creditors from having the assets of insolvent debtors administered in accordance with the terms of the federal act. It has been thought that to hold otherwise would be to allow the states, by a particular form of legislation, or by the action of their courts, to override a law of Congress on a subject over which the Constitution has given to Congress supreme power.*" (Italics added.)

6. *In re Booth's Drug Store, Inc.*, 19 F. Supp. 95, D. C. Va., 1937.

In this case the corporation was incorporated in 1925. In 1935 the State Corporation Commission issued a certificate revoking the charter for failure to pay the annual registration fees and franchise taxes. The corporation continued in business under its corporate name for considerably over a year and then had a judgment against it in its corporate name; it then made an assignment for the benefit of creditors, which was an act of bankruptcy. On January 19, 1937, certain creditors filed an involuntary petition in bankruptcy.

The objection to the petition was that the corporation was dead, and because a dead man could not be held to be a bankrupt a dead corporation could not, and those cases where a dissolved corporation could come into the bankruptcy court were cases where the act of bankruptcy occurred prior to the dissolution. *Held* the adjudication of bankruptcy should be made. The Court said (p. 96):

> "The doctrine of the common law was that upon expiration of its charter, a corporation at once lost its identity and its powers; its life was instantly terminated. All debts due to or from it were extinguished, at least so far as any right of action thereon was concerned. Upon the dissolution of a corporation all of its rights and liabilities became extinct. • • • A corporation could not, after dissolution, either sue or be sued. • • •
>
> "In the course of time, however, most of the states—probably all of them—have enacted statutes relating to the duties, powers, responsibilities and liabilities of corporations as affected by their dissolution or the forfeiture of their corporate existence. • • •
>
> "Under the influence of the modern rule, there is abundant authority to the effect that the mere fact that a corporation has been dissolved, or has had its charter revoked under a state law, does not oust the jurisdiction of a court of bankruptcy previously obtained nor deprive a court of bankruptcy from taking jurisdiction after the dissolution.
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> • • • • •

(p. 97) "The statute specifically grants to a dissolved corporation the power to convey and dispose of its property. For that purpose and to that extent it is still a living entity. The powers of the corporation are limited after its dissolution but if, acting within the limits of those powers, it commits an act of bankruptcy, there would seem no reason why it should be immune from the legal consequences of such act. If this corporation, prior to the order revoking its charter, had made an assignment for the benefit of its creditors, there could be no question of the right to have it adjudicated a bankrupt upon such act. After the revocation of the charter it still had the right to convey property, and if in the exercise of this unquestioned power it committed an act of bankruptcy it is, in my opinion, equally subject to adjudication."

7. *White Mountain Paper Co.* v. *Morse & Co.*, 127 Fed. 643, C. C. A. 1, 1904, before Colt and Putnam, Circuit Judges, and Brown, District Judge. Opinion by Putnam, J.

After an involuntary petition in bankruptcy had been filed, but before the adjudication, the state court entered a decree dissolving the corporation. Because the corporation "was non-existent," an objection was made that it could not be adjudged a bankrupt. The statute provides that upon dissolution the corporation shall be continued for the purpose of prosecuting and defending suits and to enable it to settle and close its affairs "but not for the purpose of continuing the business for which they were established."

Held, the bankruptcy court had jurisdiction; the decision being based on the proposition that the dissolution decree did not in fact effect a *true dissolution* because under the statute it retained for a specified period a *qualified existence.*

8. *Cresson & Clearfield Coal Co.* v. *Stauffer*, 148 Fed. 981, C. C. A. 3, 1906. Before Dallas, Gray and Buffington, Circuit Judges. Opinion by Judge Gray.

In July, 1905, the sheriff seized all property of the cor-

poration on a judgment obtained against it, and sold the property which included the "franchise right to be a corporation." In December, 1905, an involuntary petition in bankruptcy was filed against the corporation *which was consented to by the corporation, in writing.* Adjudication was in February, 1906. The petition was objected to on the ground that the sale under the *scire facias* worked, under the Pennsylvania laws, a dissolution of the corporation and that the bankrupt therefore had no existence; and that for the same reason, the corporation could not consent through its directors to the bankruptcy adjudication. *Held,* the court had jurisdiction. At page 984, the court said:

> "It is true, that the law already referred to provides that the property and franchises of the corporation, sold under this special *fi. fa.,* shall pass to the purchaser, thus, in effect, terminating the existence of the old corporation. If, however, the proceeding by which this property and franchises were sold, was an act of bankruptcy, it was void and of no effect. *If it were not, still the existence of the corporation is not terminated in every respect by this requirement* of the state law. It has often been held that, *even where a charter expires by time,* its existence will be considered as being *extended for the purpose of winding up its affairs,* securing creditors and satisfying the ends of justice, *even without special statutory authority* for that purpose, and we think that *the paramount authority of the federal bankrupt law is sufficient to keep alive the corporation* in this case for the purposes of the bankrupt jurisdiction created by the said act, and to give efficacy to the admission made by the directors of the insolvent corporation as an act of bankruptcy." (Italics supplied.)

9. *In re Thomas,* 78 F. (2) 602, C. C. A. 6, 1935. Cert. den. in 56 Sup. Ct. 149. Before Moorman, Hicks and Allen, Circuit Judges. Opinion by Judge Allen.

On appeal from an order denying motion to dismiss a petition for adjudication of bankruptcy. The facts show that

on March 29, 1933, the debtor, a Michigan corporation, while insolvent, filed a petition in the state court seeking dissolution of its charter; and on May 10, 1933, a decree was so entered, and a receiver was appointed. The petition in bankruptcy was filed July 28, 1933, less than four months after the decree of dissolution, and it was an involuntary proceeding. The objection to the petition was that the decree of dissolution extinguished the corporation and because it no longer existed, it could not be amenable to the Bankruptcy Act. The Supreme Court of Michigan in *Cady* v. *Centreville Knit Goods Mfg. Co.*, 48 Mich. 133, 11 N. W. 839, and in *Jacobs* v. *E. Bement's Sons*, 161 Mich. 415, 126 N. W. 1043, had stated that after such a dissolution decree, the corporation no longer exists. The court held that the corporation could be declared a bankrupt. At page 603, the Court said:

> "If the duties of the corporation have not been fully discharged, the paramount jurisdiction of the Bankruptcy Court under article 1, section 8, cl. 4 of the Constitution of the United States attaches, and may not be defeated by dissolution under state law. As stated by Mr. Chief Justice Fuller in *In re Watts & Sachs*, 190 U. S. 1, 27, 23 S. Ct. 718, 724, 47 L. Ed. 933, 'The operation of the bankruptcy laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under state statutes.'"

10. *In re Munger Vehicle Tire Co.*, 159 F. 901, C. C. A. 2, 1908. Before Lacombe, Coxe, and Noyes, Circuit Judges. Opinion ~~*per*~~ *curiam.*

In 1905 the Governor of New Jersey proclaimed that the charter of the corporation was void for failure to pay taxes. In 1906 the board of directors held a meeting and resolved to take action in a suit filed against the corporation on a claim of a director. In 1907 the corporation was adjudged a bankrupt. The objection to the bankruptcy petition was based on the ground that "the company was defunct, and,

like a deceased person, incapable of being adjudged a bankrupt.". The New Jersey statutes provided that for two years after dissolution the corporation should be continued for the purpose of prosecuting and defending suits, and to settle and close its affairs. *Held,* the corporation could be adjudged a bankrupt. The court said at page 905 that "a proceeding in involuntary bankruptcy may fairly be considered a suit to settle and close up the affairs of the bankrupt and dispose of its property."

11. *In re American & British Mfg. Corp.*, 300 F. 839, D. C. Conn. 1924.

In 1921, a creditors' bill was filed in New York against a New York corporation, receivers were appointed to take over the assets in Connecticut and in New York, and all of the assets were liquidated by the receivers. In November, 1923, more than six months after the assets were liquidated, the corporation filed a *voluntary* petition in bankruptcy in the Connecticut district. The petition was objected to on the ground that the district court in Connecticut had no jurisdiction in view of the action had in New York. *Held,* the court had jurisdiction.

At page 847, the court said:

> "To hold as the petitioner claims would be to rule that, once a receiver is appointed, the business then loses its character, and not only is operated under court direction, but that a debtor could not receive the benefits of the Bankruptcy Act, at least while the receivers were in charge. I do not find that the authorities so hold, and the contrary seems the most reasonable and equitable rule."

In addition to the foregoing decisions, the Court is referred in the footnote to Law Review articles approving the decisions.

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35 Columbia Law Review 108 (1935).

21 Minnesota Law Review 144 (1937).

Such of the foregoing decisions as presented the issue upon the filing of an *involuntary* petition by creditors, are distinguished by the petitioner upon that ground. *The distinction has no validity. Bankruptcy courts, if they have jurisdiction at all, have equal authority and exclusive power, whether the matter is brought by the debtor or by creditors.*

Whether the bankruptcy court has jurisdiction is measured, not by the nature of the petition, but by whether the debtor corporation has committed an act of bankruptcy or is unable to meet its debts as they mature and has not wound up its affairs by distributing its assets to those entitled thereto. It is of such corporations that the national bankruptcy act takes cognizance.

The statute of limitations is found in this test of condition and circumstance, and not in some arbitrary rule of a state legislature.

Until the duties of a distressed corporate debtor have been fully discharged, the jurisdiction of the bankruptcy court is paramount. *Voluntary as well as involuntary petitions call for the exercise of that jurisdiction.*

An apparent exception to the rule announced in the foregoing cases is found in the decision of *Vassar Foundry Co. v. Whiting Corp.*, 293 F. 248, affirmed 2 F. (2) 240, CCA 6, referred to on pages 29 and 30 of petitioner's brief. The decision was rendered before the amendments to the bankruptcy act. The corporation had been dissolved by a state court order and a receiver put into possession of its assets. A year later the corporation filed its *voluntary* petition in bankruptcy. The court, composed of circuit judges Denison, Mack, and Donahue, speaking through the former said (p, 241):

> "So far as the statute (Michigan) applies to *solvent* corporations, it clearly is not subject to be defined as an insolvency law, nor is its existence or operation in-

> consistent with the purpose of the Bankruptcy Act. * * * In these proceedings, the petition alleged that the corporation was *solvent; that clearly gave the state court jurisdiction*, whether the allegation was true or not. * * * This conclusion does not leave an open door for *insolvent* Michigan corporations to escape bankruptcy." (Italics supplied.)

From the above it is apparent that the court recognized the supremacy of the federal bankruptcy law, *for it is said that the operation of the state law was not inconsistent with the bankruptcy act since the corporation alleged itself to be solvent.*

Furthermore if the decision in the Vassar Foundry Co. case is an exception to the otherwise uniformity of decision, it has been overruled by the later decision of the Circuit Court of Appeals for the Sixth Circuit in In re Thomas, 78 F. (2) 602, and in Capital Endowment Co. v. Kroeger, 86 F. (2) 976. In the latter case in allowing a voluntary petition to be filed, the court said, p. 979:

> **"The fact that the debtor has been ousted from its corporate franchises in Ohio neither destroys its property nor its title thereto."**

The case of *In re National Surety Company*, 7 F. Supp. 959, presents no exception to the rule announced uniformly. The corporation was classified as an insurance company; and its property had been turned over to the Superintendent of Insurance of New York. The national bankruptcy act excludes insurance companies, 11 U. S. C. A. Sec. 22.

The dictum of Judge Evans, while sitting in District Court in *In re 211 East Delaware Bldg. Corp.* 14 F. Supp. 96, is referred to in petitioner's brief page 31. There are three answers: first, it is dictum; second, Judge Evans speaks of the "effect which this loss of corporate existence *may* have" upon the filing of a voluntary petition; and third, the dictum does not announce the rule in the Seventh Circuit as stated subsequently in the instant case.

To summarize Section I of this brief:

The powers of the federal legislature and courts are supreme and exclusive (when exercised) over bankruptcy matters.

No state can annul corporate existence to defeat or impair the paramount federal authority.

The federal bankruptcy courts have jurisdiction until the affairs of a corporate debtor, which is bankrupt or cannot meet its obligations as they mature, have been closed and its property distributed or reorganized.

The policy of the recent amendments to the bankruptcy act is to protect stockholders as well as creditors. To that end the amendments and Act, as remedial legislation, should be liberally interpreted.

Without exception, decided cases concur with the holding of the Circuit Court of Appeals in the instant case. To reverse this uniform rule would establish interminable confusion.

II.

THE RESPONDENT CORPORATION EVEN AFTER THE DECREE OF DISSOLUTION HAD A QUALIFIED EXISTENCE UNDER THE ILLINOIS LAW.

The foregoing section of this brief is concerned with the relationship between the paramount authority of the Federal legislature and the Federal courts over bankruptcy matters as compared with the authority of the state to dissolve a corporation. It is contended in that section that even though the respondent corporation is dissolved by the decree of a court of competent jurisdiction, nevertheless a federal court of bankruptcy has power to wind up the affairs of that corporation for the benefit of its stockholders and its creditors.

It is the thesis of this section of the brief that the respondent corporation even after dissolution has a qualified and continuing existence under the laws of Illinois until its affairs are wound up, its creditors satisfied, and its remaining assets distributed to its stockholders.

The respondent corporation was dissolved pursuant to the provisions of the general corporation act of Illinois, which became effective July 1, 1919. Section 14 of that Act (Smith-Hurd Illinois Rev. Statutes, 1929 Chap. 32)*. It is provided that all corporations of the state whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts and selling and conveying the corporate property. It is further provided that such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity. Section 79 of the same Illinois Act provides that dissolution for any cause whatever shall not impair any remedy against such corporations for liabilities incurred previous to dissolution if suit is brought within two years after such dissolution.

Previous to the enactment of the General Corporation Act of Illinois of 1919, the provisions of Section 14 thereof had appeared in Sections 10 and 11 of Chap. 32, Illinois Revised Statutes, relating to Corporations. Under these earlier but similar provisions there arose the case of *Singer & Talcott Co.* v. *Hutchinson,* 176 Ill. 48 (1898). In that case the Court held that the Corporation, though it had been dissolved by expiration of its charter, and more than two years had expired, still continued to exist so that it could bring a writ of error to the Supreme Court of Illinois for the purpose of reversing a judgment which had been rendered against it. The Court said (p. 51):

> "The law is, that the corporate capacity of a corporation to sue ceases on dissolution, except as such capacity is continued by statute, or its name is used in an equitable proceeding for the purpose of distributing its assets as a trust fund."

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* The appropriate sections of the General Corporation Act of Illinois in force at the time of the decree of dissolution of the respondent corporation are set forth verbatim in the Appendix.

Further, the court said (p. 53):

> "This corporation was kept alive for the purpose of being made such a party to the original action, and, being so alive for such purpose, is preserved by the Practice-act with authority to prosecute an appeal or a writ of error."

It is to be noted that in this case, the Supreme Court of Illinois stated (p. 51) that it was the established law of the State, evidenced by a long line of decisions, that the suing out of a writ of error was the beginning of a new suit.

In the earlier case of *Life Assn. of America*, v. *Fassett*, 102 Ill. 315, the Supreme Court of the State held (p. 323-4):

> "With a view of mitigating the rigor of the common law with respect to the effects of a defunct corporation, the legislature of this and most, if not all, of the other states of the Union have, by appropriate legislative enactments provided for a just and equitable distribution of their assets in cases of insolvency, or sudden dissolution from any cause, and our own act on the subject contains a provision which in express terms extends their corporate existence two years from the date of their dissolution, for such purpose. Sections 10 and 25, chap. 32, Rev. Stat.
>
> From these and other provisions of the statute it clearly appears that it is a part of the settled policy of the State, at least so far as domestic corporations are concerned, that upon their dissolution, however that may be effected, they shall nevertheless be regarded as still existing for the purpose of settling up their affairs and having their property applied for the payment of their just debts. * * *"

Many subsequent decisions of the Illinois courts have announced the same doctrine. For instance, in *Commercial Trust Co.* v. *Mallers*, 242 Ill. 50, 53, the Court said:

> "It was held in *Life Association of America* v. *Fassett, supra*, that it is a part of the settled public policy of this State that upon the dissolution of a corporation, no matter how the dissolution may be effected, the corporation shall nevertheless be regarded as still existing for the purpose of settling up its affairs. In this

> case the suit was commenced while the defendant in error was a going corporation, and we see no reason why it should not be permitted to prosecute its suit to final judgment for the purpose of collecting its assets and settling up its affairs, even though it went into voluntary liquidation pending the litigation. In *Singer & Talcott Stone Co.* v. *Hutchinson*, 176 Ill. 48, it was held that a writ of error—a new suit—might be sued out by a corporation to review a judgment rendered against it, notwithstanding two years had elapsed after its dissolution."

See also *Perry* v. *Western Motor Car Co.*, 279 Ill. App. 195, 202; *Griggsville State Bank* v. *Newman*, 275 Ill. App. 11, 15.

These and other decisions of the state courts of Illinois have been found by the Circuit Court of Appeals for the Seventh Circuit to announce the rule here argued. In *American Bank & Trust Co.* v. *Hon*, 48 F. (2) 588, the appellant contended that the corporation had been completely dissolved and that the judgment against it having been recovered after the bank had been dissolved by order of the Circuit Court of Cook County, was void. After reviewing the Illinois law, the Circuit Court of Appeals, speaking through Judge Sparks for himself and Judges Alschuler and Evans said (p. 591):

> *"It seems quite clear under the Illinois decisions that a public policy has been adopted for this state in relation to the controversy before us which is at variance with appellant's contention and that the rights of the claimant and the corporation in such cases are reciprocal."*

The petitioner claims that its rights and the respondent's rights in the instant suit are not reciprocal. The petitioner agrees that creditors could file an involuntary petition against the respondent, but denies the right of the respondent to file a voluntary petition. No sound reason is given for such a distinction. Manifestly it would be unjust

and inequitable under the present policy of the bankruptcy laws for the bankruptcy courts to be open for creditors but not for stockholders. Since the effective date of Sections 77A and 77B, stockholders, speaking through the corporate form, are given the protection of bankruptcy proceedings.

In its brief, the petitioner denying even a qualified existence of the respondent corporation, cites (pp. 15 and 16) the cases of *Dukes* v. *Harrison & Reidy*, 270 Ill. App. 372, and *Consolidated Coal Co.* v. *Flynn Coal Co.*, 274 Ill. App. 405. In each of these cases creditors filed bills in equity more than two years after dissolution of the corporation. Such bills were dismissed because of the specific limitation in Section 79 of the then General Corporation Act of Illinois that suit must be brought and service of process had within two years after dissolution.

In *City Insurance Co.* v. *Commercial Bank*, 68 Ill. 348, cited by the petitioner on page 14 of its brief, the Court of Illinois was announcing the common law rule recognized by the Court in the later decision of *Life Assn. of America* v. *Fassett*, 102 Ill. 314, cited above. In the latter case, the Court says, as quoted above, that the rigors of the common law with respect to the effects of a defunct corporation have been mitigated by the legislature of Illinois, and by most of the other states of the union.

It is not contended that the respondent corporation has an unqualified existence under the laws of Illinois; but it is contended that under the statutes and decisions of Illinois a public policy has been adopted which permits corporations to continue their existence after dissolution for the purpose of winding up their affairs, satisfying creditors and distributing assets; and that the rights of the corporation and its creditors in this regard are reciprocal.

III.

THE PETITIONER HAD NO STANDING TO APPEAR AND CONTEST THE JURISDICTION OF THE BANKRUPTCY COURT.

Section 77B, Sub-division (a), of the Bankruptcy Act, as amended, provides for the filing of a petition for reorganization. The same sub-division provides:

> "If three or more creditors, who have provable claims, which amount in the aggregate in excess of the value of the securities held by them, if any, to $1000.00 or over, or if stockholders, holding 5 per centum in number of all shares of stock of any class of the Debtor outstanding, shall, prior to the hearing provided for in subdivision (c) clause (1), of this section, appear and controvert the facts alleged in the petition or answer, the Judge shall determine as soon as may be the issues presented by the pleadings . . . ."

In its answer to the bankruptcy petition of the respondent corporation that the Court take jurisdiction over its property, the Chicago Title & Trust Company alleged (R. 10) that it was successor trustee under trust deeds. The Masters Report (R. 71) finds that the trust deeds were to secure indebtedness of $95,000 and $15,000 respectively.

Under such circumstances, the petitioner, Chicago Title & Trust Company, was not qualified to contest the jurisdiction of the Court. In the case of *1030 North Dearborn Building Corporation*, 7 F. Supp. 896, (D. C. E. D. Illinois), the Court, Judge Lindley, held (p. 897)

> "The Trustee under the trust deed does not constitute three creditors who are qualified under subdivision (a) to appear and controvert the allegations of the petition."

Further, the Court held, after quoting Equity Rule 37, to the effect that intervention shall be in subordination to and in recognition of the propriety of the main proceeding that (p. 898):

> "Accordingly, giving consideration to the provisions

of the Bankruptcy Act aforesaid and applying the rules governing equity procedure, which, in the absence of statutory directions, control in bankruptcy, I am of the opinion that the applicants for intervention may not properly be admitted for the purpose of contesting the jurisdiction of the court or for the purpose of defeating the petition, but that they may be admitted upon proper petitions for intervention in subordination to and in recognition of the original proceeding for the purpose of presenting by bill of intervention or other appropriate pleadings their respective rights and interests in any property involved in this litigation."

A trustee cannot as such vote upon a plan of reorganization. *In re Allied Owners' Corporation,* 74 F. (2) 201, C. C. A. 6.

If we are mistaken in our views that the Chicago Title & Trust Company is not a creditor, it certainly is not *three* creditors. Opposition to the filing of a petition for reorganization cannot be made by one creditor. *In re Cheney Bros.* (D. C. Conn.), 12 F. Supp. 609, Thomas, Judge.

IV.

THE CORPORATION HAD PROPERTY WHICH COULD BE THE SUBJECT OF REORGANIZATION UNDER SECTION 77B OF THE BANKRUPTCY ACT.

On July 10, 1931, a decree was entered against the respondent corporation foreclosing certain mechanics' liens on its property; and on August 5, 1931, a Master's Certificate of Sale was issued to the purchasers (R. 72). Respondent's right to redeem the property expired on August 5, 1932 and the right of its creditors to redeem expired on November 5, 1932. (Smith-Hurd Ill. Rev. Statutes, 1929, Chap. 77, Sections 18 and 20, set out in the Appendix hereto.)

The corporation was not, however, divested of its prop-

erty by the sale and Master's Certificates under the mechanics' lien foreclosure. The certificates of sale could only ripen into title if a deed were given to the purchaser within five years from the expiration of the time of the redemption.

The pertinent Illinois statutes (Ill. Rev. Stats. Ch. 77, Sec. 16 and 30, laws of 1921) provide as follows:

> "Sec. 16. When any real estate is sold by virtue of an execution, judgment, or decree of foreclosure of mortgage, or enforcement of mechanics' lien, or vendor's lien, or for the payment of money, it shall be the duty of the sheriff, master in chancery or other officer, instead of executing a deed for the premises sold, to give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or if purchased by the person in whose favor the execution or decree is, the amount of his bid, the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed, as provided in this Act."
>
> Sec. 30. When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within five years from the expiration of the time of redemption. The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. If the time of redemption shall have elapsed before the taking effect of this Act, a deed may be given within two years from the time this Act shall take effect. When such deed is not taken within the time limited by this Act, the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed."

In *Seeberger* v. *Weinberg,* 151 Ill. 369, 37 N. E. 1033, the Illinois Court was dealing with Section 30 of the statute set out above, and the Court held that if no deed is obtained within the five year period, the certificate of sale is null and void, and the purchaser who neglects to take out a deed within the five year period cannot thereafter assert any title to the land, either at law or in equity, through his purchase.

In *Ryhiner* v. *Frank,* 105 Ill. 326, the Illinois Court held that where the sheriff's deed was not taken within the time limited by this section (Sec. 30) the certificate of purchase on which the deed was given became null and void, and the deed was of no effect.

At the time the Master made his report he found that no deed on the Master's Certificate of the state court had ever issued (R. 72). Moreover the deed will never issue because the respondent corporation has acquired the certificate or certificates of sale. The interests in the certificate of sale were surrendered by mesne conveyance to the debtor corporation resulting in a merger of the lien interest and the fee. (See Debtor's Exhibits 3, 5 and 7, R. 46, 48 and 50.) The Master specifically found that the certificates of sale are now the property of the debtor (R. 72, Finding 10).

Since, in the instant case, the deed was never obtained, the corporation has, and always has had, the property. It was never divested of the property. It is not, as the petitioner states in his brief (p. 5), a mere "possibility that the certificate of the sale of the Wilcox Avenue property might become void if the holder failed to take out a deed within five years of the expiration of the period of redemption." But even if it were true, which we do not admit, that the corporation had been divested of its property, and that the only "property" it had was the possibility that the certificate of sale would become void for failure of the holder

thereof to take out a deed, this would still be property sufficient under Section 77B. *In Re Argyle-Lake Shore Bldg. Corp.*, 78 F. (2) 491, C. C. A. 7, the corporate property had been purchased at a sale for taxes, so that the only property the corporation had was the right of redemption before the execution of the deed, and the Court held that this right of redemption was an asset and, therefore, within the jurisdiction of the Federal Court in which a petition for reorganization had been filed.

So also in *Continental Illinois National Bank & Trust Co.* v. *Chicago, R. I. & Pac. Ry. Co.*, 294 U. S. 648, (1934) it was held that a mortgagee who was in possession of the property of the debtor corporation, could be ousted of the possession by the bankruptcy court in a proceeding under Section 77 of the Bankruptcy Act, which is practically identical with Section 77B of the Act.

In Re Central Funding Corporation, 75 F. (2) 256; C. C. A. 2, (1935) where a funding corporation organized by a mortgage guaranty company in connection with a plan for the refunding of securities, guaranteed by the latter, issued bonds under a trust indenture secured by bonds and mortgages assigned to the trustee thereunder, and the funding company afterwards became insolvent, the collateral in the hands of the trustee being much less than the amount of the bonds outstanding, so that the funding company had no equity remaining in the collateral, and a petition for reorganization was filed under Section 77B, it was *held* that the petition was properly filed, and that the objection that the corporation had no equity to reorganize was not well taken. The Court speaking through Judge Augustus Hand there said (p. 259) that

> "a 'reorganization' does not necessarily presuppose the survival of the rights of stockholders or even of junior creditors, when they have become worthless,

but may be a readjustment of the rights of lienors under a new corporate structure"

and (at p. 260)

"The language of Section 77B (b) indicates that the *reorganization may be had though no equity remains in the corporation.*" (Italics supplied.)

It was also said at page 261:

"*It makes no difference whether the debtor has an equity of any value or not,* or whether his business is to continue for five or ten years or indefinitely. The most frequent occasion for a reorganization is where only creditors' rights are to be adjusted and liquidation is to be slow enough to take advantage of market conditions obtaining over a long period. Section 77B expressly provides for such situations as we have here, and they are proper subjects of bankruptcy legislation. *To restrict the act to reorganizations where the debtor has an equity, would be to deprive the section of much, if not most, of its usefulness.*" (Italics supplied.)

In Re Mortgage Securities Corporation, 75 F. (2) 261, C. C. A. 2, (1935) the court of the Second Circuit held that where the debtor has conveyed away all of its interest in the security, stripping itself of all its property except a questionable residue in a few bank accounts, it may still avail of reorganization under Section 77B. It was said that the lack of any equity remaining *in the corporation or the stockholders* does not prevent the operation of Section 77B, and it is immaterial how their interests were divested, whether by a conveyance or by a collapse in property values. At page 262 the court said:

"By these conveyances it had stripped itself of all its property except for a somewhat dubious residue in some bank accounts, amounting at most to a few thousand dollars. We have held that a substantial equity is not necessary to justify the proceeding. *We see no reason to stick at a phantom equity whose value is a mere visionary possibility.* The debtor is itself made up of its shareholders, considered as a class, and, just as they are bound together by the corporate form,

so are the secured creditors by their common trust. Indeed, the shareholders, the unsecured creditors, and the secured, are each a separate order in one hierarchy; each has its proper unity; the section is intended as a remedy to allow all or some of these classes to establish a concourse which will avoid that dismemberment of their interests which other remedies occasion. Thus it can make no difference that the group of shareholders has been definitely eliminated, either by a legal transaction as here, or by such a collapse in value that there is no reasonable expectation of revival." (Italics added.)

In Re Hotel Gibson Co., 11 Fed. Supp. 30, the corporation merely held the lease to certain property which it operated as a hotel, yet there the court held that it had sufficient property to be subject to Section 77B for reorganization purposes.

The respondent submits, therefore, that even if it *had* been divested of its property by the sale under the mechanics' liens, yet its interest in the *res* which might ripen into title upon the failure of the holder of the certificate of sale to obtain a deed, was sufficient property for the purposes of Section 77B. However, the corporation was not divested of the property and it still has it. The master's certificate of sale was acquired by the debtor (R. 72). No deed will ever issue.

CONCLUSION.

The authority of federal legislation and federal courts over insolvent or bankrupt corporations, dissolved or otherwise, is paramount. No action of a state legislature or of a state court can impair, curtail, or impede the federal power. Moreover, the federal courts have found that it is the public policy of Illinois that a dissolved corporation still has a qualified existence to garner its property and to distribute its assets, and that the rights of claimants and of the corporation in such cases are reciprocal.

A uniform host of decisions of federal courts supports the decision of the Circuit Court of Appeals, the District Court, and the Master in the instant case.

The amendments to the Bankruptcy Act are remedial, affording relief to corporations and their stockholders as well as to creditors.

The respondent corporation has never been divested of its property.

The petitioner herein, a trustee under a mortgage, has no standing to contest the jurisdiction of the Court.

It is respectfully submitted that the decree and decision of the Circuit Court of Appeals be affirmed.

GEORGE I. HAIGHT,
JOSEPH Z. WILLNER,
JOSEPH J. KARLIN,
Attorneys for Respondent.

APPENDIX.

Smith-Hurd, Illinois Revised Statutes, 1929, Chapter 32:

Expiration by limitation—Closing business.

"SEC. 14. All corporations organized under the laws of this State, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporation and selling and conveying the property and effects thereof. Such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity."

Dissolution—When creditors affected.

"SEC. 79. The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporations, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution."

Smith-Hurd, Illinois Revised Statutes, 1929, Chapter 77:

Redemption by defendant, etc.

"SEC. 18. Any defendant, his heirs, administrators, assigns, or any person interested in the premises, through or under the defendant, may, within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the sheriff or master in chancery, or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators, or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

Redemption by creditor, etc.

"SEC. 20. If such redemption is not made, any decree or judgment creditor, his executors, administrators or assigns may, after the expiration of twelve months and within fifteen months after the sale, redeem the premises in the following manner: Such creditor,

his executors, administrators or assigns may sue out an execution upon his judgment or decree, and place the same in the hands of the sheriff or other proper officer to execute the same, who shall indorse upon the back thereof a levy of the premises desired to be redeemed; and the person desiring to make such redemption shall pay to such officer the amount for which the premises to be redeemed were sold, with interest thereon at the rate of six per centum per annum from the date of the sale, for the use of the purchaser of such premises, his executors, administrators or assigns, whereupon such officer shall make and file in the office of the recorder of the county in which the premises are situated a certificate of such redemption, and shall advertise and offer the premises for sale under said execution as in other cases of sale or execution."

Illinois Revised Statutes, 1937:

Decree of involuntary dissolution.

"SEC. 91. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceeding and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease."

Survival of remedy after dissolution.

"SEC. 94. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by the decree of a court of equity when the court has not liquidated the assets and business of the corporation, or (3) by an expiration of its period of duration, shall not take away or impair any remedy given against such corporation, its directors, or shareholders, for any liability incurred prior to such dissolution if suit thereon is brought and service of process had within two years after the date of such dissolution. Such suits may be prosecuted against and defended by the corporation in its corporate name."

SUPREME COURT OF THE UNITED STATES.

Nos. 23, 24.—October Term, 1937,

Chicago Title and Trust Company, as Successor Trustee under the Trust Deed Recorded as Document No. 10325493, Petitioner,
23 *vs.*
Forty-One Thirty-Six Wilcox Building Corporation.

Chicago Title and Trust Company, as Successor Trustee under the Trust Deed Recorded as Document No. 10325493, Petitioner,
24 *vs.*
Forty-One Thirty-Six Wilcox Building Corporation.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 15, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

Respondent was organized as a corporation under the laws of Illinois; and pursuant to those laws it was dissolved. The only property it ever owned or possessed was a building and the land upon which it stood, situated at No. 4136 Wilcox Avenue in the City of Chicago. This property, when acquired, was subject to the lien of a first mortgage, securing bonds aggregating $95,000, and, subsequent to the acquisition of the property, to a junior mortgage to secure the payment of $15,000. The corporation was organized on April 10, 1929. On May 22, 1931, the Superior Court of Cook County, Illinois, in a proceeding regularly before it, and in accordance with a statute of Illinois, entered a decree dissolving the corporation and declaring its charter and authority as such to be null and void. The decree has never been appealed from or otherwise challenged or assailed. That it became and is now effective cannot be doubted.

On July 10th, certain mechanics' liens were foreclosed, and a sale of the property thereafter made pursuant to the foreclosure decree. Certificate of sale was issued, entitling the holder thereof to a conveyance of the property upon the expiration of the period of redemption. The right of redemption expired as to respondent on August 5, 1932, and as to creditors on November 5, 1932. No redemption has ever been made or attempted. On October 24, 1931, suit was brought in a state court to foreclose the lien of the first mortgage; and on November 10, 1931, suit was brought in the same court to foreclose the lien of the junior mortgage. A receiver was appointed, who took possession of the property, and was in possession thereof at the time this case was heard in the federal district court. Respondent appeared in both foreclosure suits, but apparently offered no defense.

By the statutes of Illinois (Smith-Hurd Rev. Stat., 1929, c. 32) it is provided:

"§ 14. All corporations organized under the laws of this State, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporation and selling and conveying the property and effects thereof. Such corporations shall use their respective names for such purposes and shall be capable of prosecuting and defending all suits at law or in equity.

. . . . . .

"§ 79. The dissolution, for any cause whatever, of any corporation, shall not take away or impair any remedy given against such corporation, its officers, or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution."

The two-year period, within which the corporation could sue, acquire property, or perform any corporate function apart from suits then pending, expired May 22, 1933.

Thus matters remained until May, 1935, when three persons, namely, Mrs. Fay Fischel, her father Hyman Schulman, and her brother Sam Schulman, acquired all the shares of the respondent from the then stockholders. Meetings purporting to be stockholders' and directors' meetings were then held, officers and directors elected, and a resolution was passed authorizing the filing of a petition for the reorganization of respondent under § 77 B of the Bankruptcy Act, 48 Stat. 912; 11 U. S. C. § 207.

On June 13, 1935, respondent filed a petition for reorganization under § 77B; and on June 21st, filed a petition praying for an order directing the receiver in the state foreclosure suits to turn over property in his possession and restraining the further prosecution of such suits. Petitioner answered, denying that respondent was a corporation, setting up the corporate dissolution, the foreclosure proceedings and the sale of the corporate property. It also averred that the bankruptcy petition was not filed in good faith.

The special master, to whom the case was referred, found and reported that the bankruptcy petition had been filed in good faith; that respondent had legal capacity to file the petition, and that the petition was sufficient to confer jurisdiction upon the court over respondent and the property in question. The master further found that no deed ever issued under the mechanic's lien foreclosure certificate; and that such certificate was purchased and now is the property of the debtor. However, it appears from the record that the certificate was purchased in connection with the acquisition of the stock by the three persons already mentioned, more than two years after the period of redemption had expired.

The federal district court confirmed the report of the master, appointed a temporary trustee, required the state-court receiver to turn over the property to the trustee, and restrained further prosecution of the foreclosure proceedings. On appeal, the court below affirmed the order of the district court, Judge Briggle dissenting. 86 F. (2d) 667.

In the decisions of other circuit courts of appeal, cited by respondent, support may be found for involuntary proceedings in bankruptcy against a dissolved corporation, brought by creditors and based upon an act of bankruptcy committed within four months. The question presented here differs substantially from the questions presented in those cases; and we put them aside as inapplicable, without either approval or disapproval. The sole question now for determination is whether under the facts just detailed, a corporation, dissolved and put out of existence by the state which created it, may, nevertheless, itself invoke the powers of a court of bankruptcy under § 77B. The record does not present a case where creditors are the moving parties, or where there has been any act of bankruptcy committed by the corporation, or where any pertinent law of the state is in conflict with the federal bankruptcy laws.

The decisions of this court are all to the effect that a private corporation in this country can exist only under the express law of the state or sovereignty by which it was created. Its dissolution puts an end to its existence, the result of which may be likened to the death of a natural person. There must be some statutory authority for the prolongation of its life, even for litigation purposes. *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257; *National Bank* v. *Colby,* 21 Wall. 609, 615; *Oregon Railway Co.* v. *Oregonian Ry. Co.,* 130 U. S. 1, 20. See, also, *Greeley* v. *Smith,* 3 Story 657, 10 Fed. Cas. p. 1075; *Board of Councilmen* v. *Deposit Bank,* 120 Fed. 165, 166 *et seq.*; *Dundee Mtg. & Tr. Inv. Co.* v. *Hughes,* 77 Fed. 855.

Sections 14 and 79 of the Illinois statute seem plain enough on their face; but if any doubt as to their meaning and effect would otherwise exist, that doubt has been set at rest by the decisions of the Illinois appellate courts. In *Life Ass'n of America* v. *Fassett,* 102 Ill. 315, decided before the sections under consideration were enacted, the state supreme court held that it was the settled policy of the state that upon the dissolution of domestic corporations, however effected, they were to be regarded as still existing for the purpose of settling up their affairs and having their property applied for the payment of their just debts. See *Singer & Talcott Co.* v. *Hutchinson,* 176 Ill. 48, 51. In *American Exchg. Bank* v. *Mitchell,* 179 Ill. App. 612, 615-616, the general rule was announced that after a corporation is dissolved, it is incapable of maintaining an action; and that all such actions pending at the time of dissolution abate, in the absence of a statute to the contrary. The state decisions following the enactment of these sections make it clear that this general rule still remains in force in Illinois except for the specific modifications in respect of time and circumstance set forth in §§ 14 and 79. See *Dukes* v. *Harrison & Reidy,* 270 Ill. App. 372; *Consolidated Coal Co.* v. *Flynn Coal Co.,* 274 Ill. App. 405. See, also, *A. J. Bates Co.* v. *United States,* 3 F. Supp. 245, 248; *Charles A. Zahn Co.* v. *United States,* 6 F. Supp. 317, where the Court of Claims held that under these sections of the Illinois statute an Illinois corporation ceased to exist and became incapable of transacting any business whatever in its corporate capacity; and that a suit purporting to be brought by a dissolved corporation after two years to recover internal-revenue taxes paid by the corporation could not be maintained.

It is plain enough, under the Illinois statute, that after the expiration of two years from the date of its dissolution, respondent was without corporate capacity to initiate any legal proceeding—including a proceeding under § 77B, unless we are able to say that the statute, in its terms or in its application, is in conflict with § 77B. While state laws in conflict with the laws of Congress on the subject of bankruptcies are suspended, they are suspended "only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress." *Stellwagen* v. *Clum*, 245 U. S. 605, 613. The dissolution effected under Illinois law is in no way related to a state of insolvency or bankruptcy. Insolvency or bankruptcy as a ground for dissolution is not within the terms or contemplation of the law. Liquidation of a corporation is no part of the purpose of the dissolution; nor is insolvency or liquidation involved in the proceedings to enforce the mechanics' liens or foreclose the mortgages. Quite evidently, the latter were simply ordinary proceedings to enforce liens against the property subject thereto. *Straton* v. *New*, 283 U. S. 318, 327-330. The state receivership was purely incidental to the foreclosure suits, and therefore limited and special. It was not an equity receivership within the meaning of § 77B of the Bankruptcy Act. *Duparquet Co.* v. *Evans*, 297 U. S. 216, 219-221.

The principle recently announced in *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315, 337, is applicable here. That case dealt with an intrusion by the federal government on the powers of the state over state building-and-loan associations. Speaking of these associations, this court said: "How they shall be formed, how maintained and supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicity conferred." It is not reasonably possible to find any conflict between § 77B and the Illinois statute or the dissolution proceedings or the lien-foreclosure suits.

The court below relied upon its former decision in the case of *In re 211 East Delaware Place Bldg. Corp.*, 76 F. (2d) 834. That was a case, however, where the bankruptcy petition had been filed by creditors, not by the dissolved corporation; and, therefore, the capacity of the defunct corporation to institute proceedings was not involved. We express no opinion as to the correctness of this

decision; but Judge Evans, who wrote the opinion, apparently regarded the distinction as important. For in a later proceeding in the case, 14 F. Supp. 96, 100, he said that the forfeiture of the charter of the corporation did not prevent such a proceeding by *creditors,* and then added, "The only effect which this loss of corporate existence may have upon a bankruptcy proceeding is in respect to the inability of the *corporation* to admit acts of bankruptcy or state of insolvency *or to file a voluntary petition.*" (Italics supplied.)

How long and upon what terms a state-created corporation may continue to exist is a matter exclusively of state power. *Horn Silver Mining Co.* v. *New York,* 143 U. S. 305, 312-313; *Ashley* v. *Ryan,* 153 U. S. 436, 441, 443; *New Jersey* v. *Anderson,* 203 U. S. 483, 493. The circumstances under which the power shall be exercised and the extent to which it shall be carried are matters of state policy, to be decided by the state legislature. There is nothing in the federal Constitution which operates to restrain a state from terminating absolutely and unconditionally the existence of a state-created corporation, if that be authorized by the statute under which the corporation has been organized. And it hardly will be claimed that the federal government may breathe life into a corporate entity thus put to death by the state in the lawful exercise of its sovereign authority.

The power to take the long step of putting an end to the corporate existence of a state-created corporation without limitation, connotes the power to take the shorter one of putting an end to it with such limitations as the legislature sees fit to annex. Compare *Packard* v. *Banton,* 264 U. S. 140, 145; *Davis* v. *Massachusetts,* 167 U. S. 43, 47; *Rippey* v. *Texas,* 193 U. S. 504, 509-510. And since the federal government is powerless to resurrect a corporation which the state has put out of existence for all purposes, the conclusion seems inevitable that if the state attach qualifications to its sentence of extinction, nothing can be added to or taken from these qualifications by federal authority.

It is suggested that the state cannot keep the corporation alive for its own purposes and deny it life for federal purposes. The proposition need not be challenged, since it is perfectly evident that here the state has reserved nothing for itself which it has denied to the federal authority. The only relevant provisions are those relating to legal proceedings. The state law permits such

proceedings to be instituted on behalf of a dissolved corporation within two years; but these proceedings may be brought either in the state courts, or, when appropriate, in the federal courts. After two years, no proceedings may be *initiated* on behalf of the corporation in either state or federal courts, but such proceedings as have been instituted during that period in any of these courts may be prosecuted to completion. *Singer & Talcott Co.* v. *Hutchinson, supra,* pp. 52-53. The right of resort to the courts of the state, and to those of the nation having jurisdiction, both in respect of the initiation of proceedings and the completion of proceedings already initiated, so far as Illinois law is concerned, stands upon an exact parity.

The aim of this proceeding under § 77B is to bring about a reorganization of a corporation which has been dissolved and shorn of its capacity to initiate any legal proceeding by the state which possesses, in respect of the corporation, the power of life and death. It is not a proceeding on behalf of creditors. It is not a liquidation proceeding having for its object the distribution of the corporate assets. The dissolution was adjudged because the corporation had disobeyed the laws of the state. For that reason the state prohibited the continuance of the corporate enterprise. The stockholders, however, now seek to escape the penalty for this dereliction by resuscitating and continuing the corporation, and, to that end, invoke the aid of a federal statute. This is simply an attempt to thwart a valid state law. Whether the enterprise be continued under the original name and charter of the corporation, or in some new corporate name or guise, can make no difference. Either course would contravene the legislatively-declared policy of the state. Section 77B cannot be regarded as countenancing such a result.

The only power left to the corporation when this proceeding was brought was to finish pending cases begun within two years after its dissolution. With that exception, its corporate powers were ended for all time and for all purposes. It was without authority to purchase the certificate issued at the mechanic's-lien foreclosure sale, or to adopt resolutions authorizing proceedings under § 77B, or to bring a proceeding to effectuate a reorganization under that section. In respect of these matters the corporation was nonexistent.

Decree reversed.

SUPREME COURT OF THE UNITED STATES.

Nos. 23 and 24.—October Term, 1937.

Chicago Title and Trust Company, as successor trustee under the trust deed recorded as document 10325493, Petitioner, *vs.* Forty-One Thirty-Six Wilcox Building Corporation, Respondent.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 15, 1937.]

Mr. Justice Cardozo, dissenting.

I am unable to concur in the opinion of the Court.

1. Respondent, though dissolved, was still a corporation in such a sense and to such a degree as to have capacity to maintain a proceeding in bankruptcy for the liquidation of its assets.

By Bankruptcy Act § 4 (11 U. S. C. § 22 (a)), any corporation, with exceptions not now material, may become a voluntary bankrupt.

By Bankruptcy Act § 1 (6) (11 U. S. C. § 1 (6)), " 'corporations' shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships. . . ."

Respondent, when it filed its petition in the bankruptcy court, was still in possession of some of the privileges and powers of private corporations not possessed by individuals or partnerships. True, a decree of dissolution had been entered by a court of Illinois, the place of its domicile. True, two years had gone by since the making of that decree. None the less, the corporation still had the power, if suits were then pending either in its favor or against it, to litigate in its corporate name and through its corporate officials. *Life Association of America* v. *Fassett*, 102 Ill. 315; *Singer & Talcott Stone Co.* v. *Hutchinson*, 176 Ill. 48; *Commercial Trust Co.* v. *Mallers*, 242 Ill. 50; *Graham & Morton Transp. Co.* v. *Owens*, 165 Ill. App. 100; *Griggsville State Bank* v. *Newman*, 275 Ill. App. 11. With the license of Illinois, respondent was actively defending suits for the foreclosure of mortgages on its property when it went into

the federal court. A fragment of corporate power was thus untouched by dissolution. Within the definition of the Bankruptcy Act, the body that retained this power, and indeed exercised it too, was still a corporation. There are suggestions in the books that even in the absence of a statute preserving corporate capacities after a decree of dissolution, the bankruptcy power to distribute the assets of an insolvent debtor is not subject to destruction by a withdrawal, possibly a precipitate one, of corporate existence. See, e. g., *Hammond* v. *Lyon Realty Co.*, 59 F. (2d) 592, 594, 595. Cf. *Austin* v. *Thomas*, 78 F. (2d) 602; *In re American & British Mfg. Corp.*, 300 Fed. 839, 847; *Cresson & Clearfield Coal Co.* v. *Stauffer*, 148 Fed. 981. The case at hand does not charge us with a duty to decide whether that is so. Here the state has elected to keep the corporation in existence, maimed but still alive. In choosing to create or continue an artificial entity, though with limited and narrow powers, the state subjects its creature to the bankruptcy power of the Congress in so far as that power is directed at juristic beings of that order. Congress has said to Illinois: "If an association with any corporate capacities exists under your laws, bankruptcy—either voluntary or involuntary—is a proper form of liquidation." To this the state responds, or is figured as responding: "An association with corporate capacities does exist under our laws, but it may not go into a court of bankruptcy because we will not give it the capacity to go there. Winding up proceedings for one in its position are in the state tribunals only." The response, even if taken to be authentic, must be held of no avail. It is not within the competence of Illinois by any form of words to preserve the artificial entity for a purpose of her own and destroy it for the purpose of withdrawal from the supremacy of federal law.

2. If respondent has capacity to maintain a bankruptcy proceeding to liquidate its business through the medium of a sale for cash, it has capacity also to maintain a bankruptcy proceeding under section 77B.

A proceeding under section 77B is styled one to give effect to a corporate reorganization. Whatever its form or label, it derives its origin and vitality from the bankruptcy power. *Continental Illinois National Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648; *Campbell* v. *Alleghany Corporation*,

75 F. (2d) 947; *In re New Rochelle Coal & Lumber Co.*, 77 F. (2d) 881. Only because the remedy is traceable to that power is it constitutional and valid. The notion is baseless that reorganization, even when initiated on the petition of the debtor, is solely or chiefly for the benefit of shareholders. It is even more distinctively and commonly for the benefit of creditors. Cf. *In re Central Funding Corporation*, 75 F. (2d) 256, 261. The old form of bankruptcy had in view a liquidation of the assets for cash and nothing else, a method of disposing of them that might result in needless sacrifice. The new form of bankruptcy is more flexible and often more efficient, permitting as it does, a disposition of the assets upon credit as well as for cash, and in consideration of shares of stock or bonds to be issued by the buyer. Whoever, being a corporation, may resort to the old form, is at liberty, acting in good faith, to resort to the new. This is so by the express mandate of the statute, which tells us (§ 77B; 11 U. S. C. § 207 (a)) that "any corporation which could become a bankrupt under section 4 (11 U. S. C. § 22) of this Act" may petition in the new proceeding. By that test a dissolved corporation with capacity requisite to apply to a court of bankruptcy for a liquidation of its assets has the capacity requisite to apply for a reorganization of its business. As to this, the lower federal courts are in general accord. *Old Fort Improvement Co.* v. *Lea*, 89 F. (2d) 286; *In re 4136 Wilcox Bldg. Corp.*, 86 F. (2d) 667; *Capital Endowment Co.* v. *Kroeger*, 86 F. (2d) 976; *In re 211 East Delaware Place Bldg. Corp.*, 76 F. (2d) 834, 836. Their opinions vindicating that conclusion are instructive and convincing.

This is not to say that every method of reorganization appropriate or permissible for a corporation whose life is unimpaired is appropriate or permissible for one already doomed. The plan of reorganization will be unlawful if it attempts to authorize the debtor, following a decree of dissolution, to do business thereafter in defiance of state law. In general there will be little difficulty in so adapting a decree to the necessities of the particular case as to attain the needed harmony. The opinions already cited suggest appropriate expedients. *Old Fort Improvement Co.* v. *Lea, supra*, p. 290; *Capital Endowment Co.* v. *Kroeger, supra*, p. 979. Instead of continuing the business through the petitioning debtor or its agents, the decree may permit the formation of another corporation which will take over the assets, issuing shares of stock or

bonds to creditors or others. There may be new capital, new shareholders, new directors and officers. Neither in the record nor in the precedents does one find a basis for a holding that the formation of such a corporation will be in conflict with any public policy of the state of Illinois. The old corporation was dissolved for failure to pay franchise taxes and file an annual report. The new one, if created, may promote the welfare of the state both financially and otherwise. Be that as it may, the state will be amply competent to vindicate her own dignity if there is a fraud upon her laws. No plan of reorganization is before us at this time. So far as appears, none has been prepared. Whether the plan to be submitted later will be worthy of confirmation is a question for the future.

Cases may indeed arise where a court will be satisfied upon the filing of the petition that reorganization is not feasible. In that event the proceeding may be dismissed as not brought in good faith. *Tennessee Pub. Co.* v. *American Bank*, 299 U. S. 18, 22. At times a decree of dissolution may be a circumstance along with others pointing to that conclusion. Here the good faith of the debtor has been found by the courts below after inquiry by a Master to whom the cause had been referred. The single question presented to us by the petition for certiorari is one of jurisdiction. Did a court of bankruptcy have power to entertain the proceeding at the instance of such a suitor? I hold that power did not fail.

Mr. Justice STONE and Mr. Justice BLACK join in this opinion.